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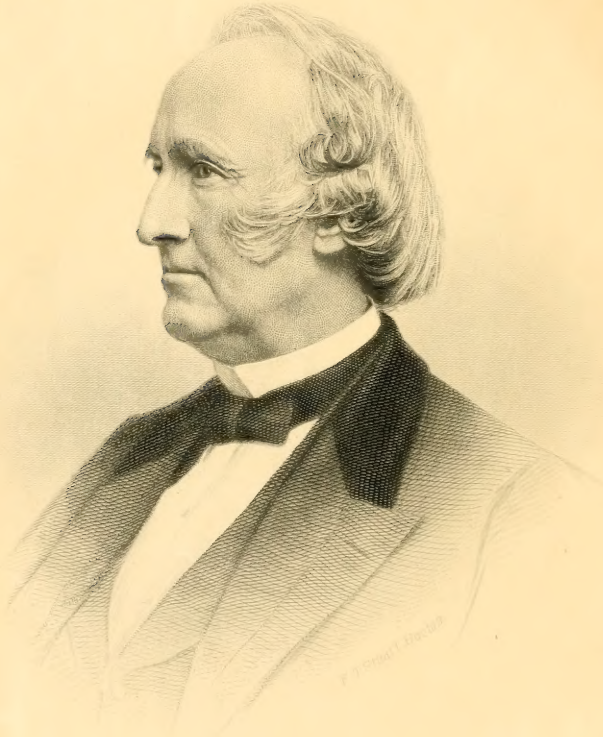

WENDELL PHILLIPS

Statesman Edition — Vol. XI

Charles Sumner

HIS COMPLETE WORKS

With Introduction

BY

HON. GEORGE FRISBIE HOAR

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EXCLUSION OF WITNESSES ON ACCOUNT OF COLOR.

REPORT, IN THE SENATE, OF THE COMMITTEE ON SLAVERY AND FREEDMEN, FEBRUARY 29, 1864.

FEBRUARY 8, 1864, on the day of introducing his Amendment of the Constitution, declaring that "all persons are equal before the law," Mr. Sumner asked, and by unanimous consent obtained, leave to bring in a bill to secure equality before the law in the courts of the United States, which was read the first and second times by unanimous consent, and, on his motion, referred to the Committee on Slavery and Freedmen. This was in harmony with other efforts on an earlier day.[1] February 29th, he reported the bill to the Senate without amendment, accompanied by the following report, of which three thousand extra copies were ordered to be printed for the use of the Senate. The success of this measure appears at a later date.[2]

THE Committee on Slavery and the Treatment of Freedmen, to whom was referred Senate Bill (No. 99) entitled "A Bill to secure equality before the law in the courts of the United States," have had the same under consideration, and ask leave to report.

BEFORE making a change in our laws, it is important to consider the nature and extent of what is proposed; especially is this the case, if the change will be far-reaching in influence. Therefore the Committee have thought best, in proposing to prohibit all exclusion

[1] *Ante*, Vol. VI. pp. 442, 502; Vol. VII. p. 152.
[2] *Post*, Vol. IX. pp. 39–46.

of colored testimony in the courts of the United States, to exhibit with some particularity the considerations bearing on the subject.

EXCLUSION OF COLORED TESTIMONY RECOGNIZED BY CONGRESS.

CONGRESS has never, in formal words, declared that witnesses in the courts of the United States shall be incompetent to testify on account of color. The abuse has arisen indirectly. But it is none the less fastened upon the national jurisprudence. By Act of July 16, 1862, it was provided "that the laws of the State in which the court shall be held shall be the rules of decision as to the competency of witnesses in the courts of the United States, in trials at Common Law, in Equity, and Admiralty."[1] And this rule, thus authoritatively declared, had been practically recognized by the courts of the United States from the beginning of the Government. It appears from the Judiciary Act of 1789, under which the national courts were organized, that jurors in these courts "shall have the same qualifications as are requisite for jurors by the laws of the State of which they are citizens"; and still further, "that the laws of the several States, except where the Constitution, treaties, or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at Common Law in the courts of the United States, in cases where they apply."[2] Under these injunctions it was very easy, if not natural, for the national

[1] Acts 37th Cong. 2d Sess., Ch. CLXXXIX. Sec. 1: Statutes at Large, Vol. XII. p. 588.

[2] Acts 1st Cong., Ch. XX. Sec. 29, 34: Ibid., Vol. I. pp. 88, 92.

courts to adopt the law of evidence in the States where they were respectively held; and thus the incapacity of colored testimony in those States where it prevailed became a rule of evidence in the national tribunals.

It is plain that such a system made the administration of justice differ in different States. The same statute might be successfully administered in a State where there was no exclusion of colored testimony, and miserably fail in another State where such exclusion prevailed; and the same judge might be called in one court to admit the testimony, and in another court to reject it. But the least objection to this system is its want of uniformity. In lending the sanction of the United States, even indirectly, to an exclusion founded on color, all the people have been made parties to injustice.

To appreciate the true character of this proscription, we must repair to the Slave States, where it is declared, and consider it in the very language, legislative and judicial, by which it is maintained, not neglecting the eccentricities of judicial opinion by which it has been illustrated. From the statement of the rule its consequences will become apparent. It may be proper afterwards to glance at the associate examples of history, and also to endeavor to comprehend the reasons on which the proscription has been vindicated.

EXCLUSION OF COLORED TESTIMONY IN THE SLAVE STATES.

THE Committee begin with the statutes of the States where this proscription prevails. Each State will be considered by itself.

(1.) In Delaware the rule assumes its mildest form, yet even there it is indefensible. It has been expressed by Chief Justice Bayard, who, in an opinion of the court, said: "On the introduction of Negro Slavery into this country, it became a settled rule of law that slaves should not be suffered to give evidence in any matter, civil or criminal, affecting the rights of a white man."[1] In this spirit the Revised Code of Delaware has provided that "to give evidence against any white person" is one of the "rights of a freeman."[2] But the rule is thus applied: "In criminal prosecutions, a free negro, or free mulatto, if otherwise competent, may testify, if it shall appear to the court that no competent white witness was present at the time the fact charged is alleged to have been committed, or that a white witness, being so present, has since died, or is absent from the State, and cannot be produced: *Provided*, that no free negro or free mulatto shall be admitted as a witness to charge a white man with being the father of a bastard child."[3] With this exception, the free negro or mulatto is disqualified as a witness against a white person.[4] But colored testimony is admissible in a case between colored persons, or against a colored person where the other party is white.[5]

The subtilties in the application of this rule appear in a decided case, where one of three accomplices was indicted for kidnapping a colored boy. The latter was opposed as a witness, on the ground that a competent white witness, an accomplice who had not been indicted,

[1] State *v.* Whitaker, 3 Harrington, R., 550.
[2] Ch. 52, § 12.
[3] Ch. 107, § 4.
[4] Ch. 52, § 12.
[5] Elliott *v.* Morgan, 3 Harrington, R., 317.

might be produced. But the court, considering that the statute was originally enacted to remedy injustice to free persons of color, construed it liberally, and admitted the testimony of the colored boy, on the ground that the commission of an offence by two or more persons ought not to render a witness incompetent, who would be competent, if the offence had been committed by only one person. It was further said, that the statute, when it speaks of a competent white witness, means not merely his competency in the common sense of the term, but the sufficiency of his evidence under ordinary circumstances to produce conviction, — although a jury was directed to acquit the prisoner, unless part of the accomplice's testimony was confirmed by unimpeachable evidence.[1] In another case, where two white witnesses, not accomplices, were present at an assault, the court at first excluded the testimony of the colored person; but when it afterwards appeared that one of them was drunk and the other did not see the whole transaction, although both knew that a blow was struck, the testimony of the colored person was admitted.[2]

Still further, it has been declared in Delaware, that, on indictment of a white man for kidnapping a free colored person, the latter is not competent to prove his freedom.[3] So, also, in an action against a stage-coach proprietor for aiding in the escape of a slave, the admission of the latter that he is slave of the plaintiff cannot be received.[4] But a free colored person may make oath to his book of original entries, and thus make it evidence even against a white person, on the declared

1 State *v.* Whitaker, 3 Harrington, R., 549.
2 State *v.* Cooper, Ibid., 571.
3 State *v.* Jeans, 4 Ibid., 570.
4 Redden *v.* Spruance et als., Ibid., 217.

ground that "it would be idle [for the law] to recognize in persons of color the right to hold property, and to obtain redress in law and equity for injuries to person or property, if the means of this redress be denied them."[1]

Prior to the statute originally passed in 1799, where a white person committed an assault on a colored woman, and there was no third person present, the latter was held as a witness;[2] but where several white persons were present, the colored person was held incompetent.[3]

(2.) In Maryland, the Act of 1717, Ch. 13, § 2, provides that "no negro or mulatto slave, free negro, or mulatto born of a white woman during his time of servitude by law, or any Indian slave, or free Indian natives of this or the neighboring provinces, be admitted and received as good and valid evidence in law, in any matter or thing whatsoever depending before any court of record, or before any magistrate within this province, wherein any Christian white person is concerned." Yet, nevertheless, according to this same Act, § 3, where other sufficient evidence is wanting against any negro, in such case the testimony of any negro may be heard and received in evidence, according to the discretion of the several courts of record or magistrate before whom such matter or thing against such negro shall depend, provided such testimony do not extend to depriving them of life or member.

The same system is pursued in the later Act of 1796, Ch. 67, § 5, which provides that manumitted slaves

[1] Webb *v.* Pindergrass, 4 Harrington, R., 439.
[2] State *v.* Bender, 3 Ibid., 572, note.
[3] Collins *v.* Hall, Ibid., 574, note.

shall not be allowed "to give evidence against any white person," nor be received "as competent evidence to manumit any slave petitioning for freedom." But by Act of 1808, Ch. 81, § 1, it is provided, that, in all criminal prosecutions against any negro or mulatto, slave or free, the testimony of any negro or mulatto, slave or free, "may be received in evidence for or against them, any law now existing to the contrary notwithstanding."

The original Act of 1717 does not in terms extend to free mulattoes, and the Act of 1796 does not extend to the issue of manumitted slaves. But where "a free-born white Christian man" was convicted of felony on the testimony of a mulatto born of a manumitted negro, there was among the judges in the Court of Appeals such diversity of opinion on the legality of the testimony that no decision was ever given.[1] In another case it was decided, that, where both parties are "free white Christian persons," a free colored person is incompetent,[2] although a mulatto descended in the female line from a white woman is competent.[3]

(3.) In Virginia, the Code declares positively that "a negro or Indian shall be a competent witness in a case of the Commonwealth for or against a negro or Indian, or in a civil case to which only negroes or Indians are parties, *but not in any other case.*"[4] The decisions of the courts illustrate this proscription. Thus, it has been adjudged that a free colored person cannot testify for a white person, even against a colored person.[5]

[1] State *v.* Fisher, 1 Harris and Johnson, R., 750.
[2] Rusk *v.* Sowerwine, 3 Ibid., 97.
[3] Sprigg *v.* Negro Mary, Ibid., 491.
[4] Ch. 176, § 20.
[5] Winn *v.* Jones, 6 Leigh, R., 74.

In another case a question was incidentally raised on the competency of a colored convict as a witness against another convict, with regard to an offence committed in the penitentiary, and it was suggested that convicts generally might be witnesses against each other.[1] This question, however, was subsequently disposed of by a provision declaring, that, on the prosecution of a convict, "all other convicts in the penitentiary shall be competent witnesses for or against the accused, *except that negroes shall not be allowed as witnesses against a white person.*"[2] They may, however, testify in his favor.

(4.) In Kentucky, the Revised Statutes provide that "a slave, negro, or Indian shall be a competent witness in a case of the Commonwealth for or against a slave, negro, or Indian, or in a civil case to which only negroes or Indians are parties, *but in no other case.* This shall not be construed to exclude an Indian in other cases, who speaks the English language and understands the nature and obligation of an oath."[3] Under this provision, as under that of Virginia, it has been decided that a free colored person cannot be a witness for a white person against a colored person.[4]

(5.) In North Carolina, the Revised Statutes provide that "all negroes, Indians, mulattoes, and all persons of mixed blood descended from negro and Indian ancestors to the fourth generation inclusive, (though one ancestor of each generation may have been a white person,) whether bond or free, shall be deemed and taken to be *incapable in law to be witnesses in any case whatsoever,*

[1] Johnson *v.* The Commonwealth, 2 Grattan, R., 581.
[2] Code of Virginia (1849), Ch. 215, § 9.
[3] Ch. 107, § 1. See Turney *v.* Knox, 7 T. B. Monroe, R., 91.
[4] Page *v.* Carter, 8 B. Monroe, R., 192.

except against each other."[1] Under this statute they cannot testify for each other in a criminal case. But the decisions furnish curious illustrations. Thus, when a colored person was convicted on colored testimony as a principal felon, it was subsequently held, on trial of the white accessory, that the record of the conviction was only *primâ facie* evidence of guilt.[2] In another case it was held that a free colored woman could not make affidavit charging a white man as father of her illegitimate child,[3] although the contrary has been decided in Kentucky, on the assumption that the act is merely preliminary to the real controversy.[4]

(6.) In Tennessee, the Act of 1794, Ch. 1, § 32, provides that "all negroes, Indians, mulattoes, and all persons of mixed blood descended from negro and Indian ancestors to the third generation inclusive, (though one ancestor of each generation may have been a white person,) whether bond or free, shall be taken and deemed to be incapable in law to be witnesses in any case whatever, *except against each other: Provided,* That no person of mixed blood in any degree whatsoever, who has been liberated within twelve months previously, shall be admitted as a witness against a white person." Under this Act, evidently borrowed from the earlier statute of North Carolina, it was decided that a colored person could not be a witness *for* another colored person. The judge who pronounced the opinion of the court seems to confess the harshness of the rule, when he says: "The cases under this Act in which these disqualified persons

[1] Ch. 111, § 50; Act 1777, Ch. 115, § 42; Act 1821, Ch. 1123. See State *v.* Ben, 1 Hawks, R., 434.

[2] State *v.* Chittem, 2 Devereux, R., 49.

[3] State *v.* Patton, 5 Iredell, Law Rep., 186.

[4] Williams *v.* Blincoe, 5 Littell, R., 171.

can be witnesses for each other are when, plaintiff and defendant both being men of color, the witnesses may at the same time be said to be reciprocally witnesses against each of the parties. Perhaps the practice in Tennessee may have been heretofore much more liberal than the statute. With that we have nothing to do. As the law speaks, so it is our duty to speak."[1] To remedy this gross injustice, the Act of 1839, Ch. 7, § 1, was passed, providing that such parties, "whether bond or free, shall be taken and deemed to be good witnesses for each other in all cases, where, by the provisions of said Act [viz. Act of 1794], they are made competent witnesses against each other in criminal prosecutions."[2]

(7.) In South Carolina there appears to have been no statute expressly excluding the testimony of a slave against a white person, although the early Act of 1740, § 39, necessarily implies this exclusion.[3] But the rule was autochthonous. It sprang from the soil without statute. Judge O'Neall, in an Essay on the Slave Laws, declares that "a slave cannot testify, except as against another slave, free negro, mulatto, or mestizo, and that without oath."[4] But the exclusion did not bear merely upon slaves. The judge announces that "free negroes, mulattoes, and mestizoes cannot be witnesses or jurors in the superior courts; . . . . they cannot even be witnesses in inferior courts, with the single exception of a magistrate's and freeholder's court, trying slaves or free negroes, mulattoes or mestizoes, for criminal of-

[1] Jones *v.* The State, Meigs, R., 121.

[2] Nicholson's Supplement to the Statutes, 131.

[3] 7 Statutes at Large, 411.

[4] 2 De Bow, Industrial Resources, etc., of the Southern and Western States, 279.

fences, and then without oath."[1] It appears that the Act of 1740, §§ 13, 14, on which this custom was founded, applies only to free Indians and slaves;[2] so that, strictly, free negroes, mulattoes, and mestizoes are not despoiled of their right at Common Law to be heard under oath, but the uniform practice under the Act, according to the judge, has been otherwise.[3] On another occasion, another judge of South Carolina says: "There is no instance in which a negro has been permitted to give evidence, except in cases of absolute and indispensable necessity; nor, indeed, has this court ever recognized the propriety of admitting them in any case where the rights of white persons were concerned."[4] In still another case it was decided that a free person of color is not competent in any case in a court of record, although both parties are of the same class with himself.[5]

The rule thus rigorously declared has given rise to some strange illustrations. Thus, for instance, in a suit to recover certain slaves as part of a gang named, evidence was admitted that other negroes of the defendant were accustomed to speak of those in question as belonging to the gang.[6] In another case, where the book of a tradesman was made up from the entries of a negro workman on a slate, and notice was affixed to the door of the shop that all credits there would be charged according to the negro's entries, the Court doubted whether the book could be evidence at all, —

[1] 2 De Bow, 274.
[2] 7 Statutes at Large, 401, 402.
[3] 2 De Bow, 274.
[4] White *v.* Helmes, 1 McCord, R., 435.
[5] Groning *v.* Devana, 2 Bailey, R., 192.
[6] Heyward *v.* Glover, Riley, Chan. Rep., 53.

but if at all, only as to the amount of work done, and then only against a person otherwise proved to be a customer.[1]

(8.) In Georgia, as in South Carolina, there is no statute expressly excluding the testimony of a slave where white persons are parties. But they are excluded. The Act of 1770, declaring slaves to be chattels personal to all intents and purposes whatsoever, provides further, "that the evidence of any free Indians, mulattoes, mestizoes, or negroes, or slaves, shall be allowed and admitted in all cases whatsoever for or against another slave accused of any crime or offence whatsoever, the weight of which evidence, being seriously considered and compared with all other circumstances attending the case, shall be left to the justices and jury."[2] But where white persons are parties, the rule of exclusion seems implied. And the same exclusion seems also implied in the later Act of December 19, 1816, § 5, where the rule, that "any witness shall be sworn who believes in God and a future state of rewards and punishments," is restricted to "the trial of a slave or free person of color."[3]

(9.) In Alabama the exclusion stands on positive statute. The Code provides that "negroes, mulattoes, Indians, and all persons of mixed blood descended from negro or Indian ancestors to the third generation inclusive, though one ancestor of each generation may have been a white person, whether bond or free, must not be witnesses in any cause, civil or criminal, except for or against each other."[4]

[1] Gage *v.* M'Ilwain, 1 Strobhart, R., 135.
[2] Section 10: Cobb's Digest, 973.
[3] Cobb's Digest, 988.
[4] Section 2276; see, also, Section 3596.

(10.) In Mississippi, the Act of June 28, 1822, is nearly the same in language with the Code of Alabama on this subject.[1] But by Act of January 19, 1830, free Indians are placed on the same footing as white persons, and consequently can testify.[2]

(11.) In Florida the law is brief and explicit. The Act of November 21, 1828, § 16, provides that "any negro or mulatto, bond or free, shall be a good witness in the pleas of the State for or against negroes or mulattoes, bond or free, or in civil cases where free negroes or mulattoes shall alone be parties, and in no other cases whatever."[3]

(12.) In Missouri, the Revised Statutes provide that "no negro or mulatto, bond or free, shall be a competent witness, except in pleas of the State against a negro or mulatto, bond or free, or in civil cases in which negroes or mulattoes alone are parties."[4] But it has been decided, that, if a free negro is party to the record, even though he vouches in a white person to defend his title, colored testimony is admissible.[5]

(13.) In Arkansas, the Revised Statutes provide that "no negro or mulatto, bond or free, shall be a competent witness in any case, except in cases in which all the parties are negroes or mulattoes, or in which the State is plaintiff and a negro or mulatto, or negroes or mulattoes, are defendants."[6]

(14.) In Louisiana, the Revised Statutes provide that "no slave shall be admitted as a witness, either

[1] Sections 110, 111: Hutchinson, Code, 861.

[2] Hutchinson, Code, 136. Harris *v.* Newman, 3 Smedes and Marshall, R., 575, 576; Coleman *v.* Doe, 4 Ibid., 40.

[3] Thompson's Digest, 542.

[4] Ch. 187, § 22.

[5] Meechum *v.* Judy, 4 Missouri Rep., 361.

[6] Ch. 158, § 25.

in civil or criminal matters, for or against a white person"; and also, "no slave shall be admitted as a witness, either in civil or criminal matters, for or against a free person of color, except in case such free individual be charged with having raised, or attempted to raise, an insurrection among the slaves of this State, or adhering to them by giving them aid or comfort in any manner whatsoever."[1]

The Civil Code declares "absolutely incapable of being witnesses to testaments" "women of what age soever," and "slaves."[2] But the Civil Code has provided expressly that "the circumstance of the witness being a free colored person is not a sufficient cause to consider the witness as incompetent, but may, according to circumstances, diminish the extent of his credibility";[3] so that a free colored person in Louisiana may be a witness for or against a white person, subject to inquiry as to the value of his testimony.

(15.) In Texas, the Act of May 13, 1846, provides that "all negroes and Indians, and all persons of mixed blood descended from negro ancestry to the third generation inclusive, though one ancestor of each generation may have been a white person, shall be incapable of being a witness in any case whatever, except for or against each other."[4]

SUMMARY STATEMENT OF THE RULE.

From this review of the provisions in the different States it appears, that, with slight differences, there is

[1] Consol. and Rev. Stat., 556; Act of 1816, Ch. 146, §§ 1, 2.
[2] Art. 1584.
[3] Art. 2261; see, also, Art. 177.
[4] Hartley's Digest, Art. 2586.

nevertheless a prevailing resemblance, such as becomes the sisterhood of Slavery.

> "Facies non omnibus una,
> Nec diversa tamen; qualem decet esse sororum." [1]

If the recital seems weary, it has not been superfluous, for it has disclosed the disgusting terms of that proscription. It is difficult to read the provisions in a single State without impatience; but the recurrence of this injustice, expressed with such particularity in no less than fifteen States,[2] makes impatience swell into indignation, especially when it is considered that in every State this injustice is adopted and enforced by the courts of the United States.

Slaves cannot testify in any of the States for or against a white person in any case, either civil or criminal, — unless, perhaps, in Maryland they may be allowed to testify against a white person who is not a Christian.

Free persons of color are also, like slaves, incompetent to testify for or against white persons, except in Delaware and Louisiana, where, under circumstances already stated, they may testify, even though a white person is a party.

It may be observed, also, that the statutes of Delaware, Virginia, Kentucky, South Carolina, Georgia, Florida, Missouri, Arkansas, Louisiana, and Texas do not expressly include Indian slaves; but probably only a few slaves are of pure Indian blood. Those of mixed Indian descent would undoubtedly be classed with mulattoes, and share their incapacity.

[1] Ovid, Metamorph., Lib. II. 13, 14.

[2] No allusion is made to Free States where exclusion on account of color was recognized.

ECCENTRICITIES OF JUDICIAL DECISIONS.

THE rule is seen also in judicial decisions, which may be classed among the eccentricities of jurisprudence. Subtilty is a common attribute of courts, but in these cases subtilty at times becomes fantastic. Reading them, we may well confess that truth is stranger than fiction.

Thus, although slaves are not permitted to testify, their conversation or declarations may, under certain circumstances, be admitted in evidence. For instance, according to a decision in Missouri, if a white person converses with a slave, the conversation, being otherwise admissible, may be proved by any other white person who heard it. In this case, Judge Scott said: "That negroes cannot testify against white persons is clear; but this rule cannot be carried so far as to exclude the conversation of a negro with a white person, when the conversation on the part of the negro is merely given in evidence as an inducement and in illustration of what was said by the white person. If the conversation of the negro had been proved by herself, then it would clearly have been illegal. Here the State proved by competent witnesses that certain remarks were made to the plaintiff in error in order to show what her reply was. It is a matter of indifference by whom they were made. All that was required was to prove by competent evidence that they were made. That they were made is a fact which may be proved like any other fact in the cause."[1]

On the same principle, it has been decided that any remarks by a slave to a white person, calling for some reply on the part of the latter, may be proved by the

[1] Hawkins *v.* The State, 7 Missouri Rep., 192.

testimony of white persons, in order to show the nature of that reply, or that none was made. The question arose on an indictment for enticing a slave, when Judge Goldthwaite said: "The question which the Court is called upon to determine is simply whether the admission of a white man to the truth of any statement made by a slave in his presence and hearing can be inferred from his silence. The rule in relation to evidence of this character, so far as we are able to deduce it from adjudged cases and the best elementary writers, is, that the statement must be heard and understood by the party affected by it, that the truth of the facts embraced in it must be within his knowledge, and that the statement must be made under such circumstances and by such persons as naturally to call for a reply. To reject the evidence in the case under consideration, solely on the ground that the party making the declaration was a slave, would be in effect to decide that under no conceivable circumstances could a statement made by a slave call for a response from a white man, — a proposition in direct opposition to our daily observation and experience. That the declaration was made by a person whose condition rendered him incompetent as a witness does not in the slightest degree affect the principle on which evidence of this character rests. If the declaration was made by a slave, and the party affected by it had made by his reply a direct admission of its truth, there could be no doubt of the admissibility of the statement and reply; and in cases of implied admissions, the admission, instead of being made by language, is made by the silence of the party."[1]

There seems no end to the illustrations of this exclu-

[1] Spencer *v.* The State, 20 Alabama Rep., 27.

sion; as, for instance, when a colored woman acted as interpreter between a testator and the person who drafted the will. In this case, Judge Lumpkin said: "We hold, that, if a negro interpreter, incapable by law of being sworn, is the *only* channel of communication between the testator and writer of the will, and there be no other evidence of the testator's knowledge of its contents or his assent thereto than that which is derived through this medium, the will cannot be executed. But if the will be written in the presence of the testator, and, in a language which he understands, it is read over to him, and his dictation and approval of the instrument are interpreted by a negro in his hearing, and in the hearing of others interested in its contents, and he signifies no dissent thereto by signs or otherwise, but, on the contrary, is understood to express himself satisfied, the will may be established, especially if it appears to have been made in conformity to the previously declared intentions of the testator as to the disposition of his property."[1]

It has been decided that the incapacity of a free colored person will not prevent him, even in a proceeding against a white person, from making an affidavit required to obtain a continuance, a new trial, absent testimony, or bail, or from swearing to a plea of *non est factum.* He may also bind a white person to keep the peace, or make affidavit for a writ of *Habeas Corpus;* and generally he may make such affidavits as may be necessary to commence a suit, or to procure such orders or steps to be taken therein as may be required to bring on a trial.[2]

[1] Potts et al. *v.* House, 6 Georgia Rep., 348.

[2] De Lacy *v.* Antoine et als., 7 Leigh, R., 438; Commonwealth *v.* Oldham, 1 Dana, R., 466; Williams *v.* Blincoe, 5 Littell, R., 171; 2 De Bow, 274.

Without this capacity, he would, according to Chief Justice Robertson, of Kentucky, "be virtually disfranchised." But the Chief Justice adds, that, when he is swearing to facts against a white man, to compel him to keep the peace, "he is not a witness, but a party swearing to what any other party may."[1] And thus his incapacity as witness is still recognized.

In another class of cases, where it became necessary to show the mental condition or bodily health of the slave, his declarations have been held to be admissible, even in a suit against a white person; but they must be proved by white testimony. Thus, in an action for breach of covenant in not teaching a slave bound apprentice to the business of coach-making, the defendant having offered to prove, that, when he wished to instruct the slave, and threatened to punish him, if he did not apply himself, the latter, as soon as the defendant was out of the way, would declare "that he did [not] care about learning the trade, it was no profit to him, and if he could avoid the lash, it was all he cared for," — it was held by that prominent magistrate, Mr. Justice Gaston, of North Carolina, that the declarations of the slave were admissible, "because his disposition and temper are subjects of investigation, and these cannot be ascertained but through the medium of such external signs."[2] In another case the same question occurred under these circumstances: A slave was hired by his master to work in certain gold mines; but, while busy at the bottom of a shaft one hundred and eighty feet deep, he was struck on the head by an iron drill weighing five pounds, which fell from the top, and his skull

[1] Commonwealth *v.* Oldham, 1 Dana, R., 467.
[2] Clancy *v.* Overman, 1 Devereux and Battle, R., 402.

was fractured so that trepanning became necessary, and "a large piece of the skull-bone was cut out." In an action by the master for damages, Judge Pearson commented on this rule of evidence: "It being material to ascertain the bodily condition of the slave, his complaints of headache when exposed to the sun, and his declarations that he was unable to work in the sun or to endure hard labor are admissible. . . . . The statute excluding the testimony of a slave or free person of color against a white man has no application. The distinction between natural evidence and personal evidence, or the testimony of witnesses, is clear and palpable. The actions, looks, and barking of a dog are admissible as natural evidence upon a question as to his madness. So the squealing and grunts or other expression of pain made by a hog are admissible upon a question as to the extent of an injury inflicted on him. This can in no sense be called the testimony of the dog or the hog. The only advantage of this natural evidence, when furnished by brutes, over the same kind of evidence, when furnished by human beings, whether white or black, is, that the latter, having intelligence, may possibly have a motive for dissimulation, whereas brutes have not; but the character of the evidence is the same, and the jury must pass upon its credit." [1]

The same principle has been recognized in still another case, where the slave died of mortification in the bowels, and no physician was called in until the day before his death, although his illness had continued for three weeks. On this occasion Judge Green said: "The statement of a sick slave as to the seat of his pain, the nature, symptoms, and effects of his malady,

[1] Biles *v.* Holmes et als., 11 Iredell, Law Rep., 21.

is as well calculated to illustrate the character of his disease as would be the statements of any other person. They are, therefore, equally admissible for that purpose. But whether expressions indicating the nature and effects of a disease uttered by the sick person are real or feigned is for the jury to determine."[1] And this principle has also been recognized in suits for breach of covenant in the warranty of a slave, or for fraud in the sale of a slave.[2] But if the master distinctly warrants the slave sound, he is not allowed to relieve himself of liability for this false warranty by declarations of the slave to the purchaser that he is diseased. A curious case occurred in Kentucky, which illustrates this principle, and also the brutality of Slavery. A poor slave woman was very ill, when her master formed "the intention of selling her, lest he should lose her value by death." Notwithstanding her pitiable condition, he succeeded in disposing of her for two hundred dollars, one quarter in a note and the remainder in saddle-trees, on the representation that she was "hearty and sound, and fit for business." Although the slave woman, before the sale, told the purchaser of her sickness, the Court annulled the sale, and directed the note and the price of the saddle-trees to be given up, saying: "The slave herself told the purchaser of her sickness before the sale; and after the sale, when informed by him that he had bought her, she stated she could not be of any use to him, as she was near death. When it is recollected that frequently, on such occasions, there is a strong indisposition in such

[1] Yeatman et al. *v.* Hart, 6 Humphreys, R., 377. See, also, Marr *v.* Hill et al., 10 Missouri Rep., 320; M'Clintock *v.* Hunter, Dudley, So. Car. Law Rep., 327; Brown *v.* Lester, Georgia Decisions, Part I. p. 77.

[2] Roulhac *v.* White et al., 9 Iredell, Law Rep., 63; Jones *v.* White, 11 Humphreys, R., 268.

creatures to be sold, and that by stratagem, to avoid a sale, they may frequently feign sickness, or magnify any particular complaint with which they are affected, the purchaser might well disbelieve her story, especially when the words of the master assured him to the contrary. For his own statements the master is responsible, and ought not to be permitted to release himself of responsibility for his own falsehoods by showing that the slave at the time so far corrected him as to tell the truth." [1]

The principle underlying the admission of the declarations of a slave is plainly, but brutally, expressed by Judge Pearson, of North Carolina. We have already seen, that, according to this learned judge, who was for the time the voice of the law, the declarations of the slave are not to be regarded as his *testimony*, any more than the barking of a dog or the grunting of a hog "can be called the testimony of the dog or the hog." The slave complains of his sickness in words, the dog moans, the hog squeals; but the law regards these expressions of suffering alike. They may be proved as facts by competent evidence; but the slave himself cannot testify what his complaints were, any more than the dog or the hog.[2]

Such are eccentricities of judicial opinion on this important question. They are not to be regarded merely as curiosities, for they are all adopted and enforced in the national courts; so that even the most brutal language becomes not merely the voice of the law, but the voice of the nation also.

[1] Brownston *v.* Cropper, 1 Littell, R., 176.

[2] Biles *v.* Holmes et als., 11 Iredell, Law Rep., 20, 21. See, also, Maddin *v.* Edmondson, 10 Missouri Rep., 643.

CONSEQUENCES OF THIS EXCLUSION.

THUS do decisions of courts, as well as statutes, conspire to exhibit this rule in revolting features. If we glance for one moment at its consequences, there will be new occasion to condemn it.

Looking at it in a single aspect, consequences appear which baffle the imagination to picture. Throughout the States where this exclusion prevails, any white person may torture and maltreat a slave in any conceivable manner and to any extent, or he may overwork and starve him, or he may whip him to death, murder him in cold blood, or burn him alive; and so long as he is the only white person present, the laws afford him the most complete immunity from punishment, except in Delaware and Louisiana, where also he is safe, if only slaves are present. It is true that the same laws profess to punish the murder of a slave as a capital offence, and also to punish severely any mutilation or other cruel treatment of him. But such laws are nothing. So long as the slave himself is not allowed to testify, so long the laws will be justly obnoxious to the charge of actually authorizing a white person to inflict any outrage upon him, even to the extent of taking life with impunity. Every white person with only slaves about him, or, it may be, with only colored persons, slave or free, has *a letter of license* to commit any outrage which passion or wickedness may prompt.

The exposed condition of slaves, on account of incapacity to testify, was recognized in the early legislation of South Carolina. The preamble to Section 39 of the Act of 1740 begins as follows: "And whereas, by reason of the extent and distance of plantations in this Prov-

ince, the inhabitants are far removed from each other, *and many cruelties may be committed on slaves, because no white person may be present to give evidence of the same.*"[1] Thus, even out of the mouth of South Carolina, before this State had learned to sacrifice everything to Slavery, we learn that "many cruelties may be committed on slaves" under operation of this rule. But no such confession was needed. The truth is apparent to the most superficial observer. Had South Carolina, at that early day, followed the suggestion of her own statute, she would have begun a career of civilization under which Slavery itself must have disappeared.

The exposed condition of slaves on this account is curiously attested by other statutes of the Slave States, showing that plantations far removed from cities, and at considerable distance from each other, are committed to the direction of *a single white overseer*, who, from the circumstance that he is the only white person present, is placed beyond all restraint or correction. Thus, in South Carolina,[2] in Florida,[3] in Georgia,[4] and in Louisiana,[5] the statutes exact the continued residence of *one white person* on every plantation, with a specified number of working slaves. These statutes had their origin in no sentiment of justice or humanity, but, as appears in early declarations, in a desire to prevent the harboring of fugitive slaves, who might find asylum among those exclusively of their own color. If, however, it was thought

[1] 7 Statutes at Large, 411.

[2] Act 1740, § 46, 7 Statutes at Large, 413; Act 1800, § 5, Ibid., 442; 3 McCord, R., 363.

[3] Act 1846, Ch. 87, § 12, Thompson's Digest, 176; Act November 21, 1828, § 43, Ibid., 511.

[4] Act December 20, 1823, § 2, 2 Cobb's Digest, 996; Act May 10, 1770, § 43, Ibid., p. 981.

[5] Act 1814, Ch. 32, §§ 1–3, Consol. and Rev. Stat., p. 525.

necessary for any purpose to require by penalties the continued residence of *even one white person* on a slave plantation, it is reasonable to infer that there must be many plantations where there is only one white person. And to one white person thus situated, and thus removed from all check or observation, the law commits the government and guardianship of slaves on a plantation, and promises him in advance the most complete impunity for all that he does, even to the extent of cold-blooded murder, provided only that he is careful to let no white person see the deed.

This proscription is not confined to slaves. Free colored persons, under operation of this rule, are exposed to the same fearful wrongs. A white person may treat them as he treats a slave, and they are absolutely without remedy. It would be difficult to point out any law, the spawn of cruelty or tyranny, in ancient or modern times, exceeding in atrocity that by which a free population is thus despoiled of protection on account of color. It was one of the boasts of Magna Charta that justice should be denied to no person, — "*Nulli negabimus justitiam*"; but under this rule it is denied to a whole race.

Of course, the race, whether bond or free, which is thus despoiled, suffers. But this is not all. Justice itself also suffers. Crime, even against white persons in the presence of colored persons, must go unpunished.

And yet this proscription is adopted and enforced in the courts of the United States.

There are other aspects of this subject which invite attention. History has her lessons. Reason also speaks with a voice that must be heard. It becomes important, therefore, to consider this proscription, first, in its origin and the examples of history, and, secondly, in the grounds on which it is founded.

EXAMPLES OF HISTORY.

This proscription, or its equivalent, is traced to the earliest age. It belongs to the Barbarism of Slavery. Even as applied to free colored persons, it must be considered as a relic of Slavery not yet removed out of sight.

The rule may also be treated as belonging to that system of evidence which, in defiance of reason, undertook to declare in advance that certain classes of witnesses were incompetent to testify, — or, in other words, that the court and jury should not be permitted to hear what they had to say on the issue. In the early Common Law numbers were excluded who are now admitted to testify; and the Committee cannot err, when they declare that the plain tendency of recent legislation, and also of judicial decisions, in England and in the United States, has been to limit the exclusion of witnesses, allowing the court and jury, on hearing their testimony, to estimate its weight and value. The whole system of exclusion was covered with ridicule by Jeremy Bentham,[1] who exposed its irrational character. In our own country it has been treated in a similar spirit, in a series of masterly essays on the Rules of Evidence, by the present learned Chief Justice of Maine, Hon. John Appleton.[2] Its origin may be traced to ignorance and prejudice. There was a time, when, in Great Britain, at least on the borders of England and Scotland, "an Englishman could

[1] Introductory View of the Rationale of Evidence, Ch. XIX.–XXII.; Rationale of Judicial Evidence, Book IX.: Works (Edinburgh, 1843), Vols. VI. pp. 86–116, VII. 335–563.

[2] An elaborate letter to Mr. Sumner from this distinguished authority on the exclusion of colored testimony was annexed to this Report, — Senate Reports, 38th Cong. 1st Sess., No. 25, pp. 18 – 28.

not be a witness against a Scot, nor a Scot against an Englishman, by reason of the enmity between the two nations; . . . . so that, if never so many Englishmen should with their open eyes see a Scot commit murder, their testimony would signify nothing, unless some Scot or other testified the same thing."[1] But their exclusion in this historic case was identical in principle and consequence with that still receiving the sanction of Congress.

This whole body of cases has been despatched by Jeremy Bentham in these words: "Exclusion put upon all persons of this or that particular description *includes a license to commit,* in the presence of any number of persons of that description, *all imaginable crimes.*"[2] The Psalmist exclaims: "I said in my haste all men are liars." But the malediction of the Psalmist in his haste is gravely adopted in this proscription, which undertakes to blast "all men" of a specified description as "liars." Assuming that all of a certain class or race or color cannot be believed on oath, it practically says, that, though present *in point of fact* at any crime, they are absent *in point of law.*

By the Mohammedan Law, no person could be convicted of adultery without the testimony of *four male witnesses,* — a requirement which was called by Gibbon "a law of domestic peace."[3] The extravagance of this requirement rendered it practically a law to prevent conviction, not unlike the law excluding testimony. It is a disguised exclusion. But of the two, the Moham-

[1] Pufendorf, Law of Nature and Nations, Book V. ch. 13, § 9.

[2] Rationale of Judicial Evidence, Book IX. ch. 3: Works (Edinburgh, 1843), Vol. VII. p. 339.

[3] History of the Decline and Fall of the Roman Empire, Ch. L.

medan Law is the least irrational. At all events, it does not assume the form of proscription.

The rule of exclusion, when founded on race or color, is something more than a rule of evidence from which justice may suffer. It is a proscription, which finds prototypes in other countries and times, kindred in character to the persecution of the Moors in Spain, and to that cruelty which for ages pursued the Jews everywhere, while it reveals that insensibility to the claims of a common humanity which has so slowly yielded to the demands of a just civilization. In France, during the last century, even after politeness had begun to prevail, it is recorded of a most intellectual lady, the commentator upon Newton, Madame du Châtelet, that she did not hesitate to undress before her male domestics, as it did not seem clear that such persons were men.[1] But it is in the irreligious system of Caste, as established in India, that we find the most perfect parallel. Indeed, the late Alexander von Humboldt, in speaking of colored persons, has designated them as a Caste;[2] and a political and juridical writer of France has used the same term to denote not only the distinctions in India, but those in our own country, which he characterizes as "humiliating and brutal."[3] But the Caste of India, by which the Brahmins and Sudras have been kept apart, is already repudiated by Christian civilization as "part and parcel of idolatry." Bishop Heber, of Calcutta, says of this injustice, it is "a system which tends more than anything else the Devil has yet invented to destroy the feelings of general benevolence, and to make nine tenths of mankind the hopeless slaves of the re-

[1] Tocqueville, L'Ancien Régime, Liv. III. ch. 5, (2me édit.,) p. 302.
[2] Essai Politique sur le Royaume de la Nouvelle-Espagne, Liv. II. ch. 6.
[3] Charles Comte, Traité de Législation, (2me édit.,) Tom. IV. pp. 129, 445.

mainder."[1] But the language with which this accomplished bishop condemns the heathen Caste of India is not inapplicable to that other Caste in our own country, which, in one of its incidents, despoils the colored person of his right to testify.

If we go back to the ancient Greeks, we find an interesting distinction. A slave was not believed on oath; so that one is recorded as exclaiming, in words which might be adopted in our day: "I know I am a slave: I don't know even what I do know."[2] But, though not believed on oath, his evidence was always taken with torture. On this account his testimony appears to have been considered of more value even than that of a freeman. Isæus, in arguing a case, said: "When slaves and freemen are at hand, you do not make use of the testimony of freemen; but, putting slaves to the torture, you thus endeavor to find out the truth of what has been done." Any person might offer his own slave to be examined by torture, or demand the same thing of his adversary, and the refusal of the latter was regarded as a strong presumption against him.[3] Thus cruelly did this sharp people seek to counteract the senseless rule of exclusion. Torture was recognized, but justice was not absolutely sacrificed.

The Romans seem to have borrowed the practice from the Greeks, or they were inspired to kindred cruelty. Not only slaves, but even free persons of an inferior condition, were seldom examined except under torture. Any person who wished the testimony of a slave might obtain it on giving sufficient security to the master for

1 Journey through Upper India, (London, 1829,) Vol. III. p. 355.

2 "Scio me esse servom: nescio etiam id quod scio." — PLAUTUS, *Bacchides*, Act. IV. Sc. vii. 21 [Ritschl, 791].

3 Smith, Dict. Greek and Roman Antiq., art. SERVUS and TORMENTUM.

full reparation on account of damage from his torture. Mr. Jefferson states mildly our own practice, in contrast with that of Rome, when he says: "With the Romans, the regular method of taking the evidence of their slaves was under torture; here it has been thought better never to resort to their evidence."[1] In the latter days of the Empire, a general rule made the slave inadmissible as witness for or against his master or his master's children, except in cases of treason, where the danger of the crime overruled ordinary considerations, and also in cases of incest and adultery, for the good reason that *in a society where all domestics were slaves any other evidence could hardly be procured.*[2] But the latter reason might obviously exist in the case of any crime; so that, on principle, when other proofs were wanting, resort might be had to the testimony of slaves. Indeed, a learned commentator on the Roman Law has distinctly said that this law did not admit slaves to be witnesses, unless the cause was difficult, looking to the welfare of the republic, *or other proofs were wanting: "Servos lex civilis non patitur testes esse, ... nisi causa sit ardua, ad rei publicæ spectans utilitatem, aut aliæ desint probationes."*[3] It became customary, in civil matters, to admit the testimony of slaves as to their own acts, although affecting the interests of their masters; and after the establishment of Christianity, when heresy took its place as a crime to be dreaded as much as treason, the testimony of slaves was received equally with regard to each.

The rule of exclusion during the Dark Ages naturally

[1] Notes on Virginia, Query XIV.: Writings, Vol. VIII. p. 385.

[2] Blair, Inquiry into the State of Slavery amongst the Romans, pp. 62–64.

[3] Voet, Commentarius ad Pandectas, Lib. XXII. Tit. 5, sec. 2. See, also, Stephens, Slavery of the British West India Colonies, Vol. I. p. 171.

took its character from the prevailing darkness. The Barbarians did not, in this respect, soften the law of ancient Rome. Amidst the cares of empire this task was attempted by Charlemagne; but how little he accomplished may be seen in his Capitularies, where slaves are rejected as witnesses against their masters, except in cases of treason, and even freedmen, unless in the third generation, are not admitted to testify against freemen.[1] And the same intolerance is attributed to the Canon Law: "*Item placuit, ut omnes servi vel proprii liberti ad accusationem non admittantur.*"[2] But it appears that at this time, among some races, it was the prerogative of royal serfs, and of others not of base condition, to have their testimony received against freemen, especially in cases of childbirth, violence, or death by accident.[3] And the influence of the clergy seems to have overruled this exclusion in certain specified districts. Thus, in 1109, on the petition of the ecclesiastics of Paris, Louis the Sixth conceded to the serfs of the latter a perfect liberty of testifying and combating (*testificandi et bellandi*) against freemen as well as slaves; and this important concession was confirmed by the Pope, who declared, however, that there ought to be a difference in the conditions governing a family of the Church and the slaves of secular persons.[4] Although this concession was made for the sake of the Church rather than its humble dependants, it was an example by which the world became accustomed to receive the testimony of slaves.

[1] Capitularia Regum Francorum, ed. Baluzius, Lib. VI. cap. 352, Lib. VII. cap. 208.

[2] Potgiesser, De Statu Servorum, Lib. III. cap. 3, p. 612, note.

[3] Ibid., p. 611; Leg. Burgund., Tit. VI. § 3.

[4] Ibid., p. 612.

In England, under the Common Law, the rule of exclusion on account of Slavery was never fully recognized. The villein seems to have been admitted as a witness in all cases except against his lord. "I do not know," says Mr. Hallam, "that their testimony, except against their lord, was ever refused in England."[1] It was only in respect of his lord that he was without rights. But he was sometimes received, although the lord himself was a party;[2] and in criminal cases generally it was no exception to a witness that he was a bondman.[3] Such, even at the beginning, was the voice of the Common Law. But with the disappearance of villenage all pretence of exclusion on this account vanished in England, never to return.

The offensive rule seems to have found less acceptance in the possessions of other countries than with us. It has been inferred, after careful inquiry, that slaves in the Spanish and Portuguese settlements are not always incompetent as witnesses, while the *Code Noir* of Louis the Fourteenth, amidst ungenerous prohibitions, allowed their evidence to be heard, "as a suggestion, or unauthenticated information, which might throw light on the evidence of other witnesses," and afterwards, by later edict, sanctioned the testimony of slaves, "when white witnesses were wanting, except against their masters."[4] But the rule is the natural complement of Slavery; and it cannot be disguised that it has prevailed, with corresponding degrees of force, wherever

[1] Europe during the Middle Ages (London, 1846), Ch. II. Part 2, Vol. I. p. 149, note.

[2] Coke upon Littleton, 122 b.; Brooke's Abridgment, *Villenage*, 68; Fitzherbert's Abridgment, *Villenage*, 38, 39.

[3] Hawkins, Pleas of the Crown, (7th edit.,) Book II. ch. 46, § 162 [45].

[4] Stephens, Slavery in the British West India Colonies, Vol. I. pp. 174, 175.

Slavery has been recognized. Its prevalence with us is only another illustration of the power of Slavery.

If you would find the country where slaves have been most completely despoiled of the right of testimony, you will not go to Greece or Rome, for in these classic lands the slaves were admitted to testify in certain cases; nor will you linger even in the Dark Ages, for there were then excepted cases; nor will you search English precedents, for the villein was incompetent only against his lord, and not always against him; nor will you look to the colonies of Spain, Portugal, or France, for in all of these the cruel rule was mitigated; but you will turn to those States of our Republic where the slave is not permitted to testify against his master or any other white person, and where even free colored persons, having no master, are smitten with the same incapacity to testify against any white person.

GROUNDS FOR THIS INJUSTICE.

From examples of history the way is easy to an inquiry into the grounds on which this proscription is founded.

The true reason may be traced to the unhappy prejudices engendered by Slavery, and to the policy of sustaining this wrong. Indeed, it is hardly less essential to Slavery than the lash itself. An early statute of Virginia places the rule on the ground that none but Christians should be witnesses, and even among these "Popish recusants convict" were inadmissible.[1] But it is generally vindicated by dwelling on *the degraded condition of the slave, and the interest he may have to*

[1] Act 1705, § 31: 3 Hening, Statutes at Large, 298.

conceal or deny the truth.[1] A careful examination will show that this apology is baseless as Slavery itself.

Of course, if a witness is too degraded to feel the sanction of an oath, his testimony should not be received. Such is the unquestionable suggestion of reason; nor can it make any difference that the witness is white or black. But the slave is not necessarily and universally so degraded as to merit exclusion, nor is his interest to conceal or deny the truth different materially from that of other persons, — although it is undoubtedly true, that, under the instinct of self-defence, and against the exactions of Slavery, he learns to deceive. But in every State except South Carolina *the oath of the slave is received against colored persons,* which could not be done, if he could not be trusted under oath. A judge of South Carolina has vindicated the capacity of the slave in this respect, and thus unintentionally repelled the rule of exclusion. "Negroes, slaves or free," says Judge O'Neall, "will feel the sanction of an oath with as much force as any of the ignorant classes of white people in a Christian country. They ought, too, to be made to know, if they testify falsely, they are to be punished for it by human laws. The course pursued on the trial of negroes, in the abduction and obtaining testimony, leads to none of the certainties of truth. Falsehood is often the result, and innocence is thus often sacrificed on the shrine of prejudice."[2] But this learned judge of South Carolina is not alone in vindicating the propriety of examining the slave on oath. Judge Clayton, of the High Court of Errors and Appeals in Mississippi, in de-

[1] Wheeler, Law of Slavery, p. 194, note.

[2] De Bow, Industrial Resources, &c., of the Southern and Western States, Vol. II. p. 274.

livering the opinion of the Court, thus expressed himself: "It is also objected, that there ought, in the case of slaves, to be some evidence of a sense of religious accountability, upon which the validity of all testimony rests, and that the same presumption of such religious belief cannot be indulged in reference to them as in regard to white persons. As to the latter, it is said the presumption is in favor of their proper religious culture and belief in revelation and a future state of rewards and punishments; as to slaves, it is contended the presumption does not arise, because of a defect of religious education. It is true, that, if the declarant had no sense of future responsibility, his declarations would not be admissible. But the absence of such belief must be shown. The simple elementary truths of Christianity, the immortality of the soul and a future accountability, are generally received and believed by this portion of our population. From the pulpit many, perhaps all, who attain maturity, hear these doctrines announced and enforced, and embrace them as articles of faith."[1]

But if slaves generally have a sufficient amount of religious belief to supply the sanction of an oath, it is clear that they are not so degraded as to justify their exclusion as sworn witnesses. And the Slave States, while excluding them, have practically recognized their fitness. Not only is the oath of a slave received in all the Slave States except South Carolina, but he is liable to punishment for perjury,[2] and sometimes the punish-

[1] Lewis *v.* The State, 9 Smedes and Marshall, R., 120.

[2] See Rev. Code Del., Ch. 80, § 28, Ch. 130, § 1; 1 Dorsey, Laws Md., 92, 777; Code Va., Ch. 194, § 1, Ch. 200, § 8; Rev. Stat. Ky., Ch. 93, art. 7, §§ 14, 15; Rev. Stat. N. C., Ch. 111, § 52; Car. and Nich., Comp. Tenn., 674; Thompson, Dig. Fa., 540, § 11; Cobb, Dig. Ga., 974, § 19, 987, § 63; Code Ala., §§ 3315, 3318; Hutchinson, Code Miss., 521, § 59.

ment inflicted is diabolic. In Virginia,[1] and also in Maryland,[2] the punishment formerly was "cropping." In Florida, the statute appoints that the offender "shall have his or her ears nailed to posts, and there to stand for one hour, and, moreover, receive thirty-nine lashes on his or *her bare back*."[3] In Mississippi, if a colored person is found to have given false testimony, he is "to have one ear nailed to the pillory, and there to stand for the space of one hour, and then the said ear to be cut off, and thereafter the other ear nailed in like manner, and cut off at the expiration of one other hour; and, moreover, to receive thirty-nine lashes on his or *her bare back*, well laid on, at the public whipping-post, or such other punishment as the court shall think proper, not extending to life or limb."[4] But every recognition of the oath of a slave on any occasion, and especially every punishment of a slave for perjury, testifies to his capacity as a witness. The barbarism of the punishment testifies also against Slavery. It is vain to say that a slave is incompetent, when, in certain cases, he is already accepted as witness, and visited with fiendish punishment, if he violates his oath.

The absurdity of this pretension is illustrated by a provision in the statutes of Kentucky, by which a slave in the penitentiary may be a competent witness against a white convict.[5] Such was early the law of Virginia, and even now he is competent for the white convict. Thus, so long as a slave commits no crime, his oath is not received in court to affect a white person even with

[1] Tate, Dig., 338, § 3.
[2] 1 Dorsey, 92.
[3] Act of 1828, § 41: Thompson's Digest, 540, § 11.
[4] Act of 1822, June 18, § 59.
[5] Rev. Stat., Ch. 74, art. 3, § 8.

the smallest pecuniary liability; but let him be sent to the penitentiary as a convict for crime, and forthwith his capacity as a witness is enlarged, and on his testimony a white convict may be deprived of life! But, obviously, the commission of a crime carrying with it the doom of the penitentiary must impair rather than increase confidence in the veracity of the criminal. Such is the absurd inconsistency in the application of this rule.

Although the rule may be properly traced to Slavery, of which it is an important ally, yet, from considerations already presented, it seems to follow that it is founded on a reason broader than Slavery, suggested, however, by Slavery. According to the logic of these considerations, the disqualification of the slave as a witness against white persons is not founded on the fact that he is a slave, because the disqualification, except in Delaware and Louisiana, attaches also to free colored persons; nor is it founded on want of that religious belief required in a sworn witness, nor on any actual disregard of his testimony under oath, because the slave in certain cases is sworn, and his testimony under oath is accepted in the administration of justice, and he is punished for perjury; but it is simply, in the last analysis, *an incapacity attached by law to persons of color.* Indeed, the obvious inference from the remarks of Judge O'Neall[1] is, that, in his opinion, it is not slavery, but color, which is the ground of exclusion. But the Committee have already shown the pernicious consequences of such proscription, and especially that the disfranchisement of the African race operates as a liberty to all white persons, not excepting, in most of the States, even white convicts, to do as they please, and commit any crime in

[1] De Bow, Industrial Resources, Vol. II. p. 274.

the Decalogue, "unwhipped of justice," if nobody but a colored person is present. It needs no argument to establish the unreasonableness of a disqualification which, according to the confession of its advocates, attaches to the shading of the human skin, especially in view of the fearful cruelty that is its natural consequence.

In Delaware and Louisiana the disqualification rests on the fact of Slavery. In many other States the free colored persons are so few in number that the fact of Slavery seems still to overshadow the whole race. Assuming, then, that the disqualification is traced not merely to the shading of the skin, but to the fact of Slavery, it is none the less to be rejected, not only as part of Slavery, but as essentially irrational and inhuman.

The slave feels the sanction of an oath hardly less than many white persons of inferior condition. On grounds of reason, therefore, and independently of prejudice, the two classes at the outset would be entitled to an equal degree of confidence, — modified, of course, and decreasing, as there was a manifest interest or temptation to testify falsely. But the slave is exposed to such corrupting power less than a white person. He can have no pecuniary interest, since he has no right of property. And, except where his master is a party or otherwise interested, he must be alike without hope of gain or fear of punishment to make him swerve from the truth. Accordingly, in all cases where his master stands indifferent, the reason for excluding the slave is not so strong as for excluding white persons of inferior condition, since the slave may feel the sanction of an oath as much as they, while he is less exposed to any disturbing influence. Such, certainly, is the conclusion justified by the facts.

The dependence of the slave upon his master must naturally subject him peculiarly to his influence, whether from hope of reward or fear of punishment; so that his testimony in favor of his master would always be viewed with suspicion. If, contrary to this active interest, the slave testifies *against* his master, his testimony would seem to be worthy of peculiar consideration. But even where he testifies *for* his master, there can be no more reason for excluding his testimony than for excluding that of a child for a father or a mother, or of excluding that of a father or a mother for a child. Unquestionably, in each of these cases the bias is stronger than any that can exist on the part of a slave, as love is stronger than fear. Therefore there is no valid reason why a slave should not be permitted to testify *for* or *against* his master. The same considerations which determine the value of other testimony will suffice with regard to him; and thus, in every respect, the rule of exclusion becomes irrational and arbitrary.

But this rule, whether applicable to slaves or free colored persons, is still more irrational and unwarranted when it is considered that the testimony is submitted to the scrutiny of a jury of white persons, under the watchful observation of a court of white persons likewise, and that it can have no effect whatever except through assent of their judgment. The motive which actuates the slave, whatever it may be, whether revenge or interest or fear, must be open to discovery. It is therefore preposterous to argue that any white person, at any time or anywhere, especially in a Slave State, can be prejudiced by colored testimony, or that he can be convicted by a white jury under the eye of a white court, unless that testimony is strictly worthy of belief. The rule of

exclusion is not only an expression of tyranny and prejudice, but an insult to the understanding, and even to common sense.

If this rule were only irrational and eccentric, it might be pardoned to immeasurable madness, and handed over to the derision of mankind. But even its absurdity disappears in its appalling injustice. Two things are obvious to the most superficial observation: first, that under its influence the slave is left absolutely without legal protection of any kind, the victim of lawless outrage; and, secondly, that even crimes against white persons may escape unpunished: so that in these two important cases justice must fail. But this failure of justice becomes intolerable, when it is considered that it is not from accident or temporary weakness, but that it is absolutely organized by law. Nor is it confined to slaves. It embraces in its ban free colored persons also, without regard to intelligence, property, or relations in life.

CONCLUSION.

Such is this proscription, as it appears (1.) in the various statutes of the Slave States, (2.) in the eccentricities of judicial decisions, (3.) in its consequences, (4.) in examples of history, and (5.) in the grounds on which it is founded. Regarding it in either of these aspects, it must be rejected. The statutes in which it is declared and the judicial eccentricities by which it is illustrated belong to the curiosities of an expiring barbarism. Its consequences shock the conscience of the world. The examples of history testify against it. The reason on which it is founded shows that it stands on nothing that is reasonable.

It is for Congress to determine whether this proscription shall continue in the courts of the United States, — or, in other words, if a local rule, barbarous, irrational, and unjust, born of Slavery, shall be allowed to exist yet longer under the national sanction.

THE MISSION TO BELGIUM.

SPEECH IN THE SENATE, ON AN AMENDMENT TO THE CONSULAR AND DIPLOMATIC APPROPRIATION BILL, MARCH 15, 1864.

MARCH 14th, the Senate having under consideration the bill making appropriations for the consular and diplomatic service, Mr. Sumner, in behalf of the Committee on Foreign Relations, moved the following amendment : —

"That the President may, in his discretion, by and with the advice and consent of the Senate, appoint an envoy extraordinary and minister plenipotentiary to the kingdom of Belgium, who shall receive no higher compensation than is now allowed to a minister resident."

The amendment was opposed by Mr. Fessenden, of Maine, to whom Mr. Sumner replied.[1]

March 15th, the debate was continued, and Mr. Sumner spoke several times. In reply to Mr. Davis, of Kentucky, he said : —

MR. PRESIDENT, — There seems a perpetual disposition in this debate to change the issue. I stated that the issue was how we shall best give efficiency to our representation in Europe. Now the Senator from Kentucky says that the issue is how we shall give our minister at Belgium an opportunity to get into a little better company. That is his imagination. Surely it is not the way the Committee directed me to state the case. It is not the way in which I have presented it at any time in this discussion. I hope that Senators will

[1] Congressional Globe, 38th Cong. 1st Sess., pp. 1094-1096.

not be diverted from the real issue, which is simply, Will the public interests be promoted by this change? The Committee answer in the affirmative, and in my humble opinion the Committee is right.

Mr. Davis. Will the Chairman specify in what respect the public interest will be promoted, in what respect the efficiency of our representative at the court of Brussels will be increased, and in what respect the increase of his grade will render this Government and its interests more acceptable to Leopold?

Mr. Sumner. In the same way, Sir, that the public interests are promoted at London, and also at Paris, by a plenipotentiary instead of a minister resident.

Mr. Davis. According to that rule, we ought to have a first-class minister at every court in Europe and at every government in South America, and everywhere else where we send diplomatic representatives.

Mr. Sumner. No, — the Senator will pardon me, — not at every court in Europe, but only at those where we have considerable interests. It all pivots upon that. What are our relations with different courts? With considerable interests, we should be represented accordingly. With inconsiderable interests only, there is no reason to raise the mission. We have first-class missions, according to our scale of rank, at London, Paris, Madrid, Turin, Vienna, Berlin, and St. Petersburg. And why?

Mr. Davis. Will the honorable Chairman tell me the relative proportion between the commercial interests of the United States and England, the United States and France, and the United States and Belgium?

Mr. Sumner. There are interests of all kinds, commercial and political, differing in different countries. I need not remind the Senator that our interests with England and France are largely superior to those with any other European power,

— much above those with Belgium ; but if you ask me what other European power I should place next after those two, I should hesitate, in the condition of our affairs at this precise moment, to place any before Belgium.

Mr. Davis. Would you not place Russia before Belgium ?

Mr. Sumner. I would not exaggerate, but I am obliged to acknowledge, in reply to the Senator, that I should hesitate at this moment to say that even Russia was so situated as to make our minister there so important to our present interests as our minister at Belgium. In one word, our minister at Brussels has more to do than our minister at St. Petersburg. Look I pray you, at the geographical position of Belgium, its thronging, active population, its commerce, its manufactures. But countries derive character and even power from their rulers, and this is the happy advantage of Belgium, especially in her relations with us. You all know that her sovereign is able to exercise a persuasive influence over international affairs, entirely out of proportion to the extent of territory he so wisely governs, and this influence has been exerted at a critical moment in our favor.

I would not say a word in disparagement of any other power. But it would be difficult, after England and France, to name any power which, all things considered, furnishes at this moment such opportunites of usefulness in the public service to any American plenipotentiary as are afforded by Belgium. Would the Senator compare our interests there with those in Prussia, one of the most respectable and highly educated courts of the globe, or with Austria, great in military power and physical resources ? At Berlin and Vienna there is less for our ministers to do, and less of opportunity, than at

Brussels. The geographical position of these capitals explains this difference, at least in part.

Or, if you please, take the government of Spain, representing that great Castilian monarchy on which it was said that the sun never set. A Senator whispers that this was said some time ago. True ; but you have in Spain the old Castilian pride and faith born of that immense empire ; and yet our interests with Spain at this moment, or, in other words, our opportunities in that kingdom, are not more important than in the smaller kingdom of Belgium, which the sun covers in much less than a single hour.

Then there is the new-born kingdom of Italy, where we have also a plenipotentiary. Does any one suppose, that, if you put aside that sympathy which every American feels for this interesting power, newly dedicated to Liberty, our interests there at this moment are equal to those with Belgium ? Here again geography explains the difference.

There only remains in this review, to which the Senator invites me, the empire of Russia, bound by many years of history to amity with the United States, and absolutely fixed as our friend beyond any jar of diplomacy or any jealousy of growing power. But our commercial relations with this extensive country are inferior to those with Belgium ; and St. Petersburg is further removed from the great centre of observation than Brussels. The Emperor of Russia is illustrious from a transcendent act, for which his name will be blessed ; but his assured regard for us takes away all solicitude as to his policy, while the complications of present questions in which he is involved render his relations to other European governments less intimate than those of King

Leopold, even if the latter had not, from family and long experience, a position of peculiar weight in the scale of European affairs, so that Belgium under his rule has a value beyond her natural power or territorial extent. Belgium may be small in domain, but so was Greece; nor will any one presume to measure the influence her sovereign may exercise by the number of square miles he governs.

But the Senator asked if there was any other government so small in numbers where we were represented by a plenipotentiary. I have before me, from the last almanac, the population of Chile, where we have a plenipotentiary. It is one million five hundred and fifty-eight thousand. Here, also, is the population of Peru, where we have a plenipotentiary, — two million five hundred thousand.

Mr. Davis. I believe that those missions ought to be reduced, and I would vote to-day for the reduction of the missions to Chile and to Peru.

Mr. Sumner. Very well; but let us take each question by itself. That is the more practical way. When the proposition to reduce the missions to Chile and Peru comes before the Senate, I shall be ready to meet it, and I do not say that I shall differ from the Senator; but that proposition is not now before us, nor is it involved even indirectly in the pending amendment.

It is said, that, if we raise this mission, next year there will be attempt to raise the salary. Very well; when that comes, we can meet it. Again it is said that next year there will be attempt to raise both mission and salary at the Hague and other places. Very well; when the time comes, — and it must have the sanction of a

committee of this body to come before the Senate, — we will meet it. Meanwhile I ask you to consider the actual question under debate, which is, whether you will authorize the Government, in view of the peculiar circumstances of the case and for the support of our interests abroad, to raise the Belgian mission without any increase of salary. I have said this too often, I know; but I have been driven to it by the pertinacity with which Senators have insisted upon presenting the case in a false light.

The amendment was adopted, — Yeas 21, Nays 18, — and the bill passed the Senate; but the House of Representatives would not consent to raise the Belgian mission. Two different conference committees were appointed. The first united in the following substitute, drawn by Mr. Sumner, which would enable the President to raise the mission in his discretion without increase of salary: "That an envoy extraordinary and minister plenipotentiary, appointed at any place where the United States are now represented by a minister resident, shall receive the compensation fixed by law and appropriated for a minister resident, and no more." But this was disagreed to by the House, and at the second conference the Senate receded from the amendment, so that it was lost.

In the next Congress it was renewed by Mr. Sumner, and prevailed. It will be found in the Consular and Diplomatic Act of July 25, 1866.[1]

[1] Statutes at Large, Vol. XIV. p. 226.

CONSULAR PUPILS.

SPEECH IN THE SENATE, ON AN AMENDMENT TO THE CONSULAR AND DIPLOMATIC APPROPRIATION BILL, MARCH 15, 1864.

THE Senate having under consideration the Consular and Diplomatic Appropriation Bill, an amendment was reported by Mr. Fessenden from the Committee on Finance reviving the provision in the Act of August 18, 1856,[1] authorizing twenty-five consular pupils, and making an appropriation for them. The amendment was opposed by Mr. Collamer, of Vermont, and Mr. Reverdy Johnson, of Maryland. Mr. Sumner said in reply : —

MR. PRESIDENT, — The chief objection of the Senator from Maryland seemed to be that we might educate these young men at the national expense and very soon thereafter lose them, — in other words, not get our money back. In the first place, it is very easy, by regulations at the State Department before these appointments, to provide against any such contingency ; and I understand that Mr. Marcy, indefatigable and ingenious as the Senator remembers he was, did, by a series of regulations, carefully provide for this very case. Should we return to the original law, the Secretary of State would have only to revive those original regulations by one of his most distinguished predecessors. I believe this a sufficient answer to the Senator.

But the Senator from Michigan [Mr. CHANDLER] has

[1] Statutes at Large, Vol. XI. p. 55, Ch. 127, § 7.

already answered him in another way, when he asked, very pertinently, What assurance have we that we shall enjoy the services of the cadets at West Point, or the naval cadets now at Newport? There are certain requirements of service, but the Senator knows well that nothing is more common than for cadets, especially military, to pass immediately from that education they have received at the expense of their country into occupations serving only their private advantage.

Mr. Johnson. That is with the consent of the Government. The Government accepts their resignations.

Mr. Sumner. Very well; what is to hinder regulations at the Department of State requiring the consent of the Government before these pupils shall be released, — in short, holding them by some words of contract for a certain term? Here let me say, that, unlike cadets, these pupils will give the Government valuable service even while pupils.

But, Sir, passing from these considerations, allow me for a moment to ask the attention of the Senate to this proposition in two aspects, — the first as a carrying out of the consular and diplomatic statute of the United States, and the second as in the nature of an educational provision calculated to benefit our consular service abroad.

In the first aspect, the Senate will bear in mind that down to 1855 we had no general diplomatic and consular statute. Our representation in foreign countries went under thorough review, and the result was the statute in our books, determining grades, adjusting salaries, and, in one word, systematizing the whole business. Let the character of the statute be borne in mind. But

this statute, which aimed to present a complete system, contained the provision for consular pupils.

Now, Sir, at that time and by that statute our consular salaries were adjusted to this very provision of consular pupils. The one was in the nature of a complement to the other. The salaries were made lower than they otherwise would have been in certain cases, because the consuls were to be aided by pupils with a compensation fixed by statute. But the provision for pupils was repealed shortly afterwards, indeed before the experiment had been tried, without, however, raising the consular salaries in corresponding degree. It seems clear that something must be done now. You must do one of two things, — either raise the consular salaries or appoint consular pupils. Otherwise the original idea of the statute fails, and our system is defective.

But this seems to be the least important aspect of the subject. A mere question of salary, or, if you please, of system in the statute, is trivial, to my mind, by the side of that other consideration to which Senators have already alluded. I said that this was part of an educational system for the advancement of our service abroad. I do not think you can exaggerate its importance in this respect. Let any one who has been abroad, or had personal acquaintance with those who have been abroad, bear testimony to the abounding ignorance in our foreign service, from the circumstance that there is nobody there, unless a hired foreigner, acquainted with the language, the laws, or the usages of the people about him. Sir, it is a shame that our offices abroad, whether consular or diplomatic, are served in this inferior way. Here, now, is a practical proposition beginning a remedy. It

is simple and direct. It seems to me that it cannot fail to be of considerable advantage. The business of these offices will be better done, and there will be a staff of educated experts, familiar with foreign life, whose knowledge and experience, even if not always in the service of Government, will pass into the capital stock and resources of the country. Nothing is clearer than that the education of the people is a source of national wealth, even of national power.

But the Senator from Vermont says that education is needed more in the diplomatic service than in the consular. Granted; it is needed very much in the diplomatic service; but because needed there, is that any reason why we should not supply it here? The argument, it seems to me, was hardly worthy of that Senator. Let a proposition be brought forward for an educational system applicable to our diplomatic representatives, and we will entertain it. Meanwhile let us act on that before us, which, I submit, is eminently practical in character. Who are our consuls? They are not diplomatic or political agents in the common sense of the term; they are commercial agents. To discharge their duties fitly, they should be familiar with the interests of commerce, how it is conducted, and the language it employs, where they happen to be. And permit me to say, that a great country like ours, one of whose chief sources of wealth and of grandeur is commerce, must not hesitate to supply the education needed to secure commercial representatives not unworthy of the Republic they represent.

As the consul is a commercial representative, he is on this account especially the agent of a commercial country. If our commerce were less, our interest in having

good consuls would be less. But with the surpassing growth of our commerce this interest enlarges. To send abroad consuls without proper education must necessarily bring the national character into disrepute, and jeopard the concerns intrusted to them. For the sake of our good name abroad, which is part of our national possessions, and also for the sake of those vast commercial concerns which encircle the globe, I hope that this proposition, which is a small beginning in the right direction, will not be rejected.

March 16th, the debate was continued, and Mr. Sumner spoke again. The amendment was adopted, — Yeas 20, Nays 16, — and the bill passed the Senate. The House disagreed to the amendment, but afterwards accepted the report of a conference committee, authorizing the appointment of "consular clerks, not exceeding thirteen in number at any one time, who shall be citizens of the United States, and over eighteen years of age at the time of their appointment, and shall be entitled to compensation for their services respectively at a rate not exceeding one thousand dollars per annum, to be determined by the President."[1]

[1] Statutes at Large, Vol. XIII. p. 139.

THE LATE HON. OWEN LOVEJOY, OF THE HOUSE OF REPRESENTATIVES.

SPEECH IN THE SENATE, ON THE RESOLUTIONS UPON HIS DEATH, MARCH 29, 1864.

MR. PRESIDENT, — It is proposed to adjourn in honor of OWEN LOVEJOY, whose recent death we mourn. Could his wishes prevail, Senators would continue in their seats and help enact into law some one of the several measures pending to secure the obliteration of Slavery. Such an act would be more acceptable to him than any personal tribute.

He spoke well always, but he believed in deeds rather than words, although speech with him was a deed. It was his contribution to that sublime cause for which he toiled always. Words may be often "the daughters of earth," but there was little of earth in his. Proceeding from a pure and generous heart, they have so far prevailed, even during his life, that they must be named gratefully among those good influences by which the triumph has been won. How his enfranchised soul would be elevated, even in those abodes to which he is removed, at knowing that his voice is still heard on earth, encouraging, exhorting, insisting that there shall be no hesitation anywhere in striking at Slavery, — that this unpardonable wrong, from which alone the Rebellion draws its wicked life, must be blasted by Presidential

proclamation, blasted by Act of Congress, blasted by constitutional prohibition, blasted in every possible way, by every available agency, and at every occurring opportunity, so that no trace of the outrage may continue in the institutions of the land, and especially that its accursed footprints may no longer defile the national statute-book! In vain you pass resolutions in tribute to him, if you neglect that cause for which he lived, and hearken not to his voice.

Shortly before he went away from Washington to die, I sat by his bedside. There, too, within call, was the beloved partner of his life. He was cheerful; but his thoughts were mainly turned to his country, whose fortunes in the bloody conflict with Slavery he watched with intensest care. He did not doubt the great result; but he longed to be at his post again, to teach his fellow-citizens, and to teach Congress, how vain to expect an end of the Rebellion without making an end of Slavery. It is only just to his fame that now, on this occasion of commemoration, all this should be faithfully told. To suppress it would be dishonest. I could not speak at his funeral, if I were expected to unite in robbing his grave of any of these honors derived from his transcendent courage and discernment in the trials of the present hour.

The Journals of the House show how faithfully he began his labors at the present session. On the 14th of December he introduced a bill, whose title discloses its character: "A bill to give effect to the Declaration of Independence, and also to certain provisions of the Constitution of the United States." It proceeds to recite that all men are created equal, and endowed by the Creator with the inalienable right to life, liberty, and the

fruits of honest toil; that the Government of the United States was instituted to secure those rights; that the Constitution declares that no person shall be deprived of liberty without due process of law, and also provides (Article six, clause two) that "this Constitution, and the laws of the United States which shall be made in pursuance thereof, shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding"; that it is now demonstrated by the Rebellion that Slavery is absolutely incompatible with the union, peace, and general welfare for which Congress is to provide; and it therefore enacts that all persons heretofore held in slavery in any of the States or Territories of the United States are declared freedmen, and are forever released from slavery or involuntary servitude, except as punishment for crime on due conviction. On the same day he introduced another bill, to protect freedmen and to punish any one for enslaving them. These were among his last public acts. And now they testify how honestly he dealt with that *question of questions* in which all other questions are swallowed up. It is easy to see that he scorned the wicked fantasy that man can hold property in man. This pernicious delusion, which is the source of such intolerable pretensions on the part of slave-masters, and, worse still, of such intolerable irresolution on the part of many professing opposition to Slavery, could get no hold of him. He knew that it was a preposterous falsehood, as wicked as false, born of prejudice and supreme credulity, and therefore he brushed aside as cobweb all the fine-spun snares of law or Constitution so ingeniously woven in its support. Recognizing Freedom as the God-given birthright

of all who wear the human form, he knew no duty higher than to protect it always; and to this end law and Constitution must minister.

He had never been a judge, and was not even a lawyer, so that the technicalities and subtilties of the profession had no chance of enslaving him. Besides, to a nature like his, independent and self-poised, what were the sophisms of learning and skill, when employed in the support of Wrong? It was enough, that, wherever Slavery appeared, it was in defiance of that commanding law of Right, before which all unjust pretensions, whatever form they take, must disappear like the morning dew under the flashing arrows of the ascending sun. From the beginning and at all times he was fixed against all compromise with Slavery, and stood like a fortress. Sir, let it be spoken here in his honor. He lies cold in death, but he could have no better epitaph than this: "*Here rests one who would not compromise with Wrong.*" When Senators and Presidents bent to the ignoble behest, he stood firm. He was gifted to see that Slavery, unlike Tariff or Bank, did not come within the range of compromise any more than the Decalogue or Multiplication Table. He saw well how shamefully unconstitutional and inhuman was the Fugitive Slave Act, in spite of every apology of compromise, and refused it all support. He lies cold in death, but his principles will live to sweep this unutterable atrocity from the statute-book, which it still fills from cover to cover with blackness.

He was not only a faithful counsellor of perfect loyalty, in whom truth was a religion and an instinct, but he was a counsellor whose experience of mankind and of public life united with aptitude for affairs in giving

to what he said added value. He sat for several years in the other House face to face with Slave-Masters, who then ruled the country, so that he knew them well in every respect, but especially in their open brutality and surpassing effrontery. During this period, while shut out from participation in the public business, his duty was that of champion, and nobly did he perform it. But those who watched him under the responsibility recently cast upon a Representative of his character observed that he developed a practical talent which rendered him useful, not only as champion, but also as workman in the machine of government. He was a supporter of the present Administration, and of that declared policy which, according to the motto of Algernon Sidney, adopted on the arms of Massachusetts, seeks "placid quiet under Liberty,"—*placidam sub Libertate quietem.* There are few among his associates who may not be instructed and inspired by his magnanimous example.

He had been a lifelong soldier of Liberty, baptized into a service of blood. While yet young, his brother, an editor in Illinois, devoted to the slave, fell a victim to the cause he served so well. His fate awakened a wide sympathy throughout the country, drawing Channing from his retirement to speak at Faneuil Hall, and touching with a living coal the lips of Wendell Phillips, whose voice then and there, for the first time, flamed forth against Slavery. It was natural that Owen Lovejoy should assume those vows of perpetual warfare with the tyrant murderer which he so truly kept, — tyrant murderer of a cherished brother, — tyrant murderer of Liberty, not only on the plantation, but everywhere throughout the land, — tyrant murderer

of the Constitution, which guards alike the rights of States and citizens, — and tyrant murderer of national peace, without which there can be no true prosperity or happiness. Thus, as a soldier of Liberty, he began, and he kept his harness on to the last.

He was one of the most amiable of men, whose heart was abundant with goodness and gentleness, and whose countenance streamed with sunshine. But on this account he was only the more inexorable toward a wrong so cruel in all its influences. A child of the New Testament, he was no stranger to the early Hebrew spirit, and had little patience with those who, born among Northern schools and churches, strove to arrest or mitigate the doom of Slavery. The famous curse of Meroz, so solemnly denounced against neutrality, which had been echoed from ancient Judea by English Puritans in their great contest, found an echo in his heart: "Curse ye Meroz, said the angel of the Lord, curse ye bitterly the inhabitants thereof, because they came not to the help of the Lord, to the help of the Lord against the mighty."[1] Of course, in this spirit he used plain words, and did not hesitate. But if he did not hesitate, it was because he saw clearly the path of duty. Amiability did not make him doubt. He was a positive man, of positive principles, who knew well how much was always lost by timid counsels, especially on great occasions. Because there were some about him who were skeptical and irresolute, he was not disheartened, but preserved to the last an example of fidelity which history will piously enshrine. His own illustrations were from the sacred writings, but a heathen poet has given a warning which is part of the lesson of his life: —

[1] Judges, v. 23.

"Old Priam's age, or Nestor's, may be out,
And thou, O Taurus, still go on in doubt.
Come, then, how long such wavering shall we see?
Thou mayst doubt on; but then thou 'lt nothing be." [1]

Of all doubts, there are none more painful or indefensible than those by which human rights are put in jeopardy.

He was a Representative of Illinois, born in Maine when Maine was part of Massachusetts, which made him a connecting link between the East and the West. The welcome he found in the West, and his complete fellowship with that region, while his sympathies overflowed to his early home, attest better than arguments the ligatures binding together these different parts of our common Union; so that, hereafter, should any malignant spirit seek to sow strife between us, his name alone will be a standing protest against the alienation. Born in the East, he was honored in the West. Honored in the West, he never lost his love for the East. But the whole country, not excepting the South, had a home in his patriotic, hospitable, and capacious heart. He hated Slavery; but he loved his country in every part, with heart, soul, and mind.

He was of the Old Guard of Antislavery, and we bury him with the honors that belong to such a soldier. Flags are at half-mast, and funeral guns are sounding in our hearts. But from his new-made grave he speaks now to the whole vast Republic, animating all good citizens to labor as he labored and to live as he lived, that this land may be redeemed. Especially does he speak to the State that honored him in life, and to those associate States constituting the mighty Northwest, where he

[1] Martial, Epigr., Lib. II. 64.

found the home of his mature years, — Indiana, Michigan, Wisconsin, Iowa, Minnesota, — exhorting them to take up bravely and without faltering the cause he made his own, that it may not lose by his death. But, alas! the vigilance of many will be needed to supply the place he filled.

Such a character must be mourned in Congress; but he will be mourned throughout the country, at all those virtuous firesides where fathers, mothers, brothers, and sisters speak of those who have helped human happiness on earth. And there is another company, who cannot yet pronounce his name, but, as they hear how truly he was their friend, will rise to call him blessed. Already, unseen of men, in vast uncounted procession, the slaves of the Union help to swell his funeral.

COLORED SUFFRAGE IN THE TERRITORY OF MONTANA.

SPEECHES IN THE SENATE, ON AN AMENDMENT TO THE BILL FOR A TEMPORARY GOVERNMENT OF THAT TERRITORY, MARCH 31 AND MAY 19, 1864.

MARCH 30th, the Senate having under consideration a bill, that had already passed the House of Representatives, to provide a temporary government for the Territory of Montana, Mr. Wilkinson, of Minnesota, moved to amend the clause relating to persons entitled to vote and eligible to office, so that, instead of "every *white male inhabitant*," it should read "every *free male citizen* of the United States, and those who have declared their intention to become such." Mr. Reverdy Johnson at once declared that "the effect of the amendment was to admit to the elective franchise in the proposed Territory black men as well as white," and, after mentioning the number of Africans now in the United States, he proceeded to say that "it can hardly be seriously contended, that, of that four millions, such portion of them as have been in a state of slavery from infancy to the present time are intelligent enough, or likely to become intelligent enough, at once to exercise the right of suffrage"; and he anticipated another question, "just as likely to excite the public as the question of the existence of Slavery in itself."

March 31st, the amendment was adopted, — Yeas 22, Nays 17. The debate continuing, Mr. Johnson said that the term "citizen" was not applicable to "black men," "because the Supreme Court of the United States has decided, and that question was directly before the Court in the Dred Scott case, that a person of African descent is not a citizen of the United States." Mr. Wilkinson was willing it should stand according to his amendment, and let the decision of the Supreme Court be whatever it might. He wanted neither "white" nor "black" put into the bill. Mr. Sumner then remarked :—

"I take it that each branch of the Government can interpret the Constitution for itself. I think that Congress is as good an authority in its interpretation as the Supreme Court, and I hope that in legislation it will proceed

absolutely without respect to a decision which has disgraced the country, and ought to be expelled from its jurisprudence."

Mr. Johnson vindicated the Dred Scott decision at length, and made an elaborate eulogy of Chief Justice Taney. In the course of his remarks, he said: "There are many men, the equals of the honorable Senator, to say the least, intellectually, who think that that decision was anything but an outrage. . . . . We have an interest, jurisprudence has an interest, justice has an interest, the nation has an interest, in maintaining the character of that tribunal against all unjust reproach. It is no light thing to pronounce a decision given by such a tribunal as that as a disgrace. . . . . I cannot, therefore, stand still and hear a tribunal like that assailed, as I think unnecessarily, by anybody, and particularly by the honorable member from Massachusetts."

Mr. Sumner replied: —

MR. PRESIDENT, — The multiplication table tells us that two and two make four. Now, if a tribunal honored like the Supreme Court should undertake to declare that two and two make five, and a Senator as distinguished as the Senator from Maryland should uphold the high tribunal in its decision, I am not satisfied that it would be presumptuous in me to call that decision in question. But the Dred Scott decision was as absurd and irrational as such a reversal of the multiplication table, besides shocking the moral sense of mankind. The Senator will pardon the little scruple with which I denounce it. I claim nothing for myself; I may be weak; but, according to the measure of my abilities as God has given them to me, I enter a standing protest against that atrocious judgment, which was false in law, and also false in the history with which it sought to maintain its false law.

The Senator seems to imply that I am not familiar with the case. Sir, I know it too well. I have read carefully the opinion of the Chief Justice, which the

Senator now vaunts, and I have read, also, the opposing opinions, by the side of which that much vaunted opinion is dwarfed into the pettiness proper to a production in such a cause, ignoble in character, and impotent except in that little brief authority incident to judicial rank. The Senator pleads for this judgment in the name of jurisprudence, of justice, and of the nation. Sir, by the same title I denounce it, — in the name of jurisprudence, which it disgraces, of justice, which it denies, and of the nation it has offended.

Among the influences and agencies that helped forward the present Rebellion, and set fellow-citizens in bloody conflict with each other, the Dred Scott decision must always be held in dismal memory. It gave conspirators new confidence. It filled patriots for a while with despair. It became the platform of Slavery, whose tyrannical behests would have triumphed, had this decision been allowed to prevail. Hating the Rebellion in its origin and all the circumstances that nursed it into wicked being, we must hate this decision.

But the Senator wandered into eulogy of that old Supreme Court, now departed, when Marshall was Chief Justice, and from the past claimed consideration for the present. Sir, I have been no careless student of that court in its great and palmy days. I know the learning, wisdom, and ability of its judgments, and am proud that there are such pages in the jurisprudence of my country. My sentiments toward the court of that day are warmed, also, by personal experience. It is among the cherished reminiscences of early life, that I was privileged to know, as a youth might know, the illustrious magistrate whom the Senator praises so well. He received me at his table, and allowed me to accom-

pany him in his morning walks to the court-room. He was a venerable character. But I pray the Senator not to claim for the Dred Scott decision any of the reverence justly belonging to his name. There is no question of tribute to Chief Justice Marshall, or respect for the tribunal while he presided over it. The Dred Scott decision is more noticed from contrast with all that is good and great in the decisions of other days. It is sad that the tribunal that had established such an authority among us should do an act by which its authority has been endangered.

This whole debate is in the nature of a diversion or a deviation, and therefore I bring it back to the precise point from which it started. The Senator from Maryland invoked the Dred Scott decision as a reason why Congress should not recognize colored persons as citizens. In reply I simply asserted the right of Congress to interpret the Constitution without constraint from the Supreme Court, and this I now repeat. Each branch of the Government must interpret the Constitution for itself, according to its own sense of obligation under the oath we have all taken. And God forbid that Congress should consent to wear the strait-jacket of the Dred Scott decision!

Mr. Johnson closed his reply by saying: "And without meaning to offend the honorable member from Massachusetts, and with all the personal regard which I feel for him, and recollecting the courtesy that he has extended to me, and which I have reciprocated from the bottom of my heart, I say to him, without any purpose of offence, that, if I am obliged to act upon the weight of authority upon all questions of Constitutional Law, I shall prefer holding to the opinion of Taney than holding to the opinion of the honorable member." Mr. Hale, of New Hampshire, after remarking that he differed from Mr. Sumner, said: "I do not believe that I think any better of that decis-

ion than he does. I think it was an outrage upon the civilization of the age and a libel upon the law ; but I do not think it was a disgrace to the Supreme Court of the United States." [*Laughter.*]

The bill passed, — Yeas 29, Nays 8.

The House of Representatives disagreed to the Senate amendment, and a Committee of Conference was ordered, which reported in its favor. But the House again disagreed, and, April 15th, another Committee of Conference was appointed, under instructions, moved by Mr. Webster, of Maryland, "to agree to no report that authorizes any other than *free white male citizens*, and those who have declared their intention to become such, to vote." The vote of the House on these instructions stood, Yeas 75, Nays 67. The Senate refused a further conference upon the terms proposed, which were abandoned by the House, and a conference without limitation was agreed to. May 19th, the Conference Committee reported, in lieu of the Senate amendment, the following clause : "All citizens of the United States, and those who have declared their intention to become such, and who are otherwise described and qualified under the fifth section of the Act of Congress providing for a temporary government for the Territory of Idaho, approved March 3, 1863." The reference to the Idaho Act required explanation, when the following dialogue took place.

MR. SUMNER. I should like to know the nature of the substitute, if the Senator from Maine [Mr. MORRILL] will be good enough to state it.

MR. MORRILL. I will state in a word that the effect of the amendment of the Committee of Conference is to authorize the temporary organization of the Government of Montana by that class of persons that were authorized to organize the Territory of Idaho.

MR. SUMNER. What class of persons was that?

MR. MORRILL. They were, as I recollect the qualification, white citizens of the United States, and such others as had declared their intention to become citizens. As it now stands, the qualification in Montana will be that the voters at the first election will be citizens of the United States, and such as have declared their intention to be citizens of the United States, and such as are qualified by the fifth section of the Act organizing the Territory of Idaho.

MR. SUMNER. That is, free white persons, I understand.

MR. MORRILL. That is what it comes to. . . . .

MR. SUMNER. Is not the new proposition almost identical with the original House proposition on the question of color?

MR. MORRILL. On the question of the exclusion of colored men it is identical. It does exclude colored men.

MR. SUMNER. I understand that the point of difference between the two Houses was simply as to the word "white" or "black."

Mr. Morrill. That was the principal question, and on that point I desire to say precisely how the Committee found the question. . . . .

Mr. Sumner. Then the proposition, as I understand it, is, that the Senate shall abandon its position. Why so? Because the House of Representatives will not abandon its position.

Mr. Morrill. No, Sir, the Senator will allow me: because there did not seem to be any practical sense in adhering to it; because to adhere to it defeated the bill; because to adhere to it accomplished no earthly purpose, gave nobody any right.

Mr. Sumner. For the other House to adhere on the other side defeated the bill also.

Mr. Morrill. Yes.

Mr. Sumner. And the question is, Which shall adhere, the side that is right or the side that is wrong?

Mr. Morrill. And that is the question the Committee submit to the Senate.

Mr. Sumner. I hope the Senate will adhere to its original position, and I believe that the assertion of that principle at this moment is more important than the bill.

In the debate that ensued, Mr. Harlan said that he should "vote against the report of the Committee, chiefly, however, because he did not think there was a pressing necessity for the organization of another Territory in that part of our domain." Mr. Sumner called attention to the Ordinance for the organization of the Northwest Territory, and then said: —

It will be observed that in this Ordinance, to which we so often refer as a commanding authority, there is no discrimination of color. Now I ask if this is not a good precedent. Like the present bill, it was applicable to a vast unsettled Territory. Senators may say that our fathers, in the Ordinance, were not practical. I am not of that number. Senators may say that our fathers, in the Declaration of Independence, were not practical. I am not of that number. Senators may say that our fathers, in the Constitution of the United States, which contains no discrimination of color, were not practical. I am not of that number. Sir, I believe that the authors of this Ordinance, and the authors of the Declaration of Independence, and the authors of the Constitu-

tion, were eminently practical, when they excluded from those instruments any discrimination of color. But it is said that there are no persons in the new Territory to whom the principle is now applicable. This can make no difference. It is something to declare a principle, and I cannot hesitate to say that at this moment the principle is much more important than the bill. The bill may be postponed, but the principle must not be postponed.

Mr. Morrill. I will suggest to the Senator, if he will permit me, —

Mr. Sumner. Certainly.

— that the statement I made about its applicability was this : it is not by possibility applicable to any man of African descent. There are some five or six thousand Indians, to whom a bill in general phrase, without limitation of "white," might possibly apply ; I do not say that it would apply to them in this case.

Mr. Sumner. Practically, the subject-matter of this clause is not Indians, but the well-known African race of this continent ; and it is proposed, by specious words wrapped up in a clause borrowed from another bill, to exclude them from the right of suffrage in this Territory ; and the argument for this injustice, as my friend from New Hampshire [Mr. Hale] has so ably stated, is only a reproduction of that well-known ancient argument for Slavery in the Territories. How often were we in those days compelled to encounter the charge that we were not practical, — that we were urging a prohibition, when there was no occasion for it ! For myself, I believe you cannot too often assert a prohibition of Slavery, nor too often assert human rights, wherever they may be called in question ; and especially do I believe

in the importance of such assertion when you are laying the foundations of a new community. "Just as the twig is bent the tree 's inclined." These are familiar words of childhood. Would my friend from Maine have the tree that he plants grow up with a generous and protecting shelter for all mankind, or shall it be the bent and crabbed product of unhappy prejudices which are only a growth of Slavery? I know my friend means no such thing; but I insist that the policy he recommends tends to such fatal end. For myself, Sir, I am satisfied with the Declaration of Independence; I am satisfied with the Constitution on this important subject; and, adopting the language of our Lieutenant-General in the field, I desire to say, "I will fight on this line to the end, even if it takes all summer." There is no line better than that of human rights. While fighting on that line, I cannot err; there is no pertinacity too great; there is no ardor that is not respectable. I thank General Grant for these words. They express his own steadfast purpose, and we all thank him. But each, in his sphere, may make them his own. I make them mine, wherever human rights are in question.

The report of the Conference Committee was adopted, — Yeas 26, Nays 13. And so this first battle for colored suffrage was lost.

CLAIMS ON FRANCE FOR SPOLIATIONS OF AMERICAN COMMERCE PRIOR TO JULY 31, 1801.

REPORT IN THE SENATE, OF THE COMMITTEE ON FOREIGN RELATIONS, APRIL 4, 1864.

APRIL 14th, the Senate, after debate, ordered three thousand extra copies of this report, — Yeas 23, Nays 19. Mr. Reverdy Johnson, while urging the extra copies, remarked: "The report is quite an elaborate one, drawn up with all the fulness which characterizes papers of this description prepared by the Chairman of the Committee on Foreign Relations. He has collected together, very accurately, I have no doubt, all the facts connected with the claims. He has given the history of the proceedings in Congress and the proceedings of the Executive, and has examined very fully all the principles of law applicable to the questions which the claims present."

The same report was subsequently adopted by the Committee on Foreign Relations, and printed by the Senate, March 12, 1867, and also January 17, 1870.

THE Committee on Foreign Relations, to whom were referred numerous petitions and resolutions of State Legislatures, taken from the files of the Senate, and also the petition of sundry citizens of New York, presented at the present session, asking just compensation for "individual" claims on France, appropriated by the United States to obtain release from important "national" obligations, have had the same under consideration, and beg leave to report.

THE welfare of the Republic requires that there should be an end of "suits," lest, while men are mortal, these should be immortal. Such is a venerable

maxim of the law, illustrated by the case before the Committee. The present claims have outlived all the original sufferers, and at least two generations of those who have so ably enforced them in the Halls of Congress. Against their unwonted vitality death has not been able to prevail.

CHARACTER OF THESE CLAIMS.

Of all claims in our history, these are most associated with great events and great sacrifices. First in time, they are also first in character, for they spring from the very cradle of the Republic and the trials of its infancy. To comprehend them, you must know, first, how independence was won, and, secondly, how, at a later day, peace was assured. Other claims have been personal or litigious; these are historic. Here were "individual" losses, felt at the time most keenly, and constituting an unanswerable claim upon France, which, at a critical moment, were employed by our Government, like a credit or cash in hand, to purchase release from outstanding "national" obligations, so that the whole country became at once trustee of these sufferers, bound, of course, to gratitude for the means thus contributed, but bound also to indemnify them against these losses. And yet these sufferers, thus unique in situation, have been compelled to see all other claims for foreign spoliations satisfied, while they alone have been turned away. At the beginning of our history, our plundered fellow-citizens obtained compensation to the amount of many million dollars on account of British spoliations. Similar indemnities have been obtained since from Spain, Naples, Denmark, Mexico, and the South American states,

while, by the famous Convention of 1831, France contributed five million dollars to the satisfaction of spoliations under the Continental system of Napoleon. Spain stipulated to pay for every ship or cargo taken within Spanish waters, even by the French; so that French spoliations on our commerce within Spanish waters have been paid for, but French spoliations on our commerce elsewhere before 1800 are still unredeemed. Such has been the fortune of claimants the most meritorious of all.

In all other cases there has been simply a claim for foreign spoliations, but without superadded obligation on the part of our Government. Here is a claim for foreign spoliations, the precise counterpart of all other claims, but with superadded obligation, on the part of our Government, in the nature of a debt, constituting an *assumpsit*, or implied promise to pay; so that these sufferers are not merely *claimants* on account of French spoliations, but they are also *creditors* on account of a plain assumption by the National Government of the undoubted liability of France. The appeal of these *creditor claimants* is enhanced beyond the pecuniary interests involved, when we consider the nature of this assumption, and especially that in this way our country obtained final release from embarrassing stipulations with France contracted in the war for national independence. Regarding it, therefore, as *debt*, it constitutes part of that sacred debt incurred for national independence, and is the only part now outstanding and unpaid.

PRELIMINARY OBJECTIONS.

Before proceeding to consider the nature of existing obligations on the part of the United States, the Committee ask attention to three objections which they encounter on the threshold: the first, founded on the alleged antiquity of the original claims; the second, on the alleged character of the actual possessors; and the third, on the present condition of the country.

I. — CLAIMS ANCIENT, BUT NOT STALE.

It is said that the claims are ancient and stale, and therefore not to be entertained. It is true that the claims are the most ancient of any now pending, and that they date from the very origin of our existence as a nation. But in this respect they do not differ from a Revolutionary pension or a Revolutionary claim. Down to this day there is a standing committee of the Senate, entitled "Committee on Revolutionary Claims"; but if a claim traced to the Revolution must be rejected for staleness, there can be little use for this committee. If these claims, after uninterrupted sleep throughout the long intervening period, were now for the first time revived, they might be obnoxious to this imputation. But, as from the beginning of the century they have occupied the attention of Congress, and been sustained by speeches, reports, and votes, it is impossible to say that they have been allowed to sleep.

The whole case was stated with admirable succinctness, as long ago as 1807, by Mr. Marion, of South Carolina, in the report of a committee of the House of Representatives.

"From a mature consideration of the subject, and from the best judgment your Committee have been able to form on the case, *they are of opinion that this Government*, by expunging the second article of our Convention with France of the 30th September, 1800, *became bound to indemnify the memorialists for those just claims* which they otherwise would rightfully have had on the Government of France, for the spoliations committed on their commerce by the illegal captures made by the cruisers and other armed vessels of that power, in violation of the Law of Nations, and in breach of treaties then existing between the two nations; which claims they were, by the rejection of the said article of the Convention, forever barred from preferring to the Government of France for compensation." [1]

Claims thus authoritatively stated at that early day cannot be overcome by any sleep.

It is true that these claims were pressed with less constancy and determination at the beginning of the century than at a later day. But there are two sufficient reasons for the change. First, the evidence on which they are founded was less generally known at the beginning than afterward. It was only in 1826, under the administration of John Quincy Adams, by the communication to Congress of the ample materials accumulated in the Archives of State, that the true strength of the case was fully revealed. Here, in one full volume, was the documentary history of the whole double transaction,[2] showing at once the original obligation of France, and the substituted obligation of the United States, reinforced by the associations of our own Revolutionary history. A more sufficient reason

[1] House Journal, February 18, 1807. Report on Petition of Merchants of Charleston, S. C.: Reports, 9th Cong. 2d Sess., Vol. II.

[2] Senate Documents, 19th Cong. 1st Sess., Vol. V., Doc. 102.

for this change is found in the fact, that for some time in the early part of the century our country was still laboring under pressure of the Revolutionary debt. As this pressure was gradually removed, and the national resources became more apparent, these claims were naturally urged with more confidence, until, on the final extinction of that debt, they occupied the attention of the best minds in both Houses of Congress.

No single question in our history has been the subject of such a succession of able reports. Whether counted or weighed, these reports are equally exceptional. They are no less than forty-one in number, twenty-two in the Senate and nineteen in the House. Among the eminent characters whose names they bear are Edward Livingston, John Holmes, Edward Everett, Daniel Webster, Caleb Cushing, Charles J. Ingersoll, John M. Clayton, and Rufus Choate. Out of the whole number only three have been adverse, — one in the Senate and two in the House. But the three adverse reports were evasive only, besides being prior to the communication of the decisive evidence on the subject. The thirty-six reports since that communication were all in favor of the claims.[1]

Resolutions in favor of these claims by thirteen States, being the original number which declared independence, have been presented to Congress between the years 1832 and 1858. Some States, not content with one series, have repeated their resolutions, and accompanied them with elaborate arguments. They all tend to the conclusion that it is the duty of Congress, without further delay, to provide for these claims; and Senators and Representatives are earnestly requested to use their

[1] See Appendix.

best exertions for an Act of Congress to carry this obligation into effect.

Memorials and petitions from the beginning testify to the sleeplessness of these claims. On the 5th of February, 1802, only forty-six days after the promulgation of the Convention of 1800, they began, and they have continued from that early day down to this very session of Congress, making in all four thousand six hundred and two. Of these, nineteen hundred and thirty-one were in the Senate, two thousand six hundred and seventy-one in the House. They are chiefly from original sufferers, their executors, administrators, assigns, widows, and heirs, residing in the large seaports from which the despoiled vessels originally sailed; but there are some from all parts of the country, where, in the vicissitudes of life, the representatives of original sufferers have been carried, — all of which may be seen in the list of these petitioners.[1]

Two several times — once under President Polk, and again under President Pierce — both Houses of Congress concurred in an act for the relief of these claimants; but this tardy justice was arrested by Presidential veto.

In the face of this constant succession of reports, resolutions of State Legislatures, and petitions, constituting not only "continual claim," but continual recognition of the claim, — the whole crowned by two several Acts of Congress, — it is impossible to infer negligence in the claimants, or, indeed, any assumption of inordinate confidence. They have had good reason to believe that they should be successful. Under such circumstances, the lapse of time, sometimes urged against them, becomes an argument in their favor; for it adds constantly re-

[1] Senate Reports, 38th Cong. 1st Sess., No. 41, Appendix.

curring testimony to their merits, besides a new title from the disappointment to which they have been doomed. Claims beginning thus early, and thus sustained, may be ancient, but they cannot be stale.

II. — POSSESSORS OF THE CLAIMS ARE NOT SPECULATORS.

A TRIVIAL remark, which is rather slur than objection, may justify a moment's attention. It is sometimes said that these claims are no longer the property of the original sufferers or their representatives, but that they have passed, like a fancy stock, into the hands of speculators. This remark, if it had foundation in fact, has little in equity. It would be hardly creditable for a government to take advantage of its own procrastination, and refuse just compensation, because the original sufferer had been compelled by unwelcome necessity to discount his claims.

From the nature of the case, such claims, being unliquidated, do not readily pass from hand to hand, but remain in the original custody, as has become apparent in ample experience. Precisely the same reflection was cast upon the claims against Spain, Denmark, and Naples, — and, indeed, it is cast upon long outstanding claims generally, until it has become a commonplace of sarcasm. The records of successive Commissions which have liquidated foreign claims afford its best refutation. In every case these Commissions required proof of property; but the evidence disclosed that the original sufferers, or their legal representatives, including heirs, executors, assignees of bankrupts, persons having a lien for advances, or underwriters, possessing in law and equity the same right as the original sufferers, were actual possessors of the

larger part. There is no reason to suppose that it would be otherwise with the claims for French spoliations. On the contrary, it is believed that they remain substantially unchanged, except by legal inheritance.

The great speculator has been Death; for there are few of these claims that have not passed through his hands. Such a transfer cannot draw the title into doubt, especially when we consider the character of the petitioners whose names are spread on the journals of Congress. It is well known that in many families these claims still exist as heirlooms, transmitted by ancestral care in full confidence that sooner or later they will be recognized by the Government.

III.—PRESENT CONDITION OF THE COUNTRY NO REASON AGAINST PAYMENT OF JUST DEBTS.

It is sometimes suggested, that, even assuming the meritorious character of these claims, yet, in the present condition of the country, they ought to be postponed. Looking at the practical consequences of this suggestion, it will be found, that, though plausible in *form*, it is fatal in *substance*. Any postponement must inevitably throw these claims into direct competition with those now accumulating on account of losses during the Rebellion, having in their favor the swelling sympathies of our time. It is not unjust to human nature, if the Committee say that the distant in time, like the distant in space, is too often out of mind. If the earlier claims are just, they should not be exposed to the hazards of any such competition, when feeling will be stronger than reason. From the probability of future claims, whose shadows already commence, the argument

is strengthened for the immediate satisfaction of those now existing, especially when we consider their character and origin.

The resources of the people are tasked to put down the Rebellion which Slavery has aroused. Let nothing be stinted. But there is another duty not to be forgotten. *The just debts of the Republic must be paid,* to the last dollar. Here, also, nothing must be stinted; and the glory of the one will be kindred to the glory of the other. The Republic will have new title to love at home and to honor abroad, when with one hand it overcomes the Rebellion now menacing its existence, and with the other does justice to ancient petitioners, long neglected, constituting the only remaining creditors left to us from the War of Independence.

STATEMENT OF THE QUESTION.

THEREFORE, putting aside all preliminary objections from alleged antiquity, from the character of the actual possessors, or from the present condition of the country, the Committee insist that the present obligations of the United States must be determined according to principles of justice and the facts of the case. The hearing now is as if there had been no lapse of time since the obligations accrued, and as if no war now existed to task the country.

Is the money justly due? To answer this question, the subject must be considered in detail, under several heads.

First. Claims of citizens of the United States against France, founded on spoliations of our commerce, as seen in their origin and history.

Secondly. Counter claims of France, founded on treaty stipulations and services rendered in the War of Independence, also as seen in their origin and history.

Thirdly. The Convention of 1800 and the reciprocal release of the two Governments, by which the "individual" claims of the petitioners were treated as a set-off to the "national" claims of France.

Fourthly. The assumption by our Government of the obligations of France, so that the United States were substituted for France, and became liable to these petitioners as France had been liable.

After considering these heads in their order, it will be proper to review the objections alleged against the liability of the United States: (1.) from the semi-hostile relations between France and the United States anterior to the Convention; (2.) from payments under the Louisiana Treaty; (3.) from payments under the Convention with France in 1831; (4.) from the Act of Congress annulling the early treaties with France; (5.) from the early efforts of our Government to obtain from France the satisfaction of these claims; and (6.) from the desperate character attributed to these claims at the time of their abandonment.

The question of "just compensation" will present itself last: (1.) in the advantages secured to the United States by the sacrifice of these claims; (2.) in the value of the losses which the claimants suffered; and (3.) in the recommendation of the Committee.

The subject is of such importance, from the magnitude of interests involved, and from its historic character, that the minuteness of this inquiry will not be regarded as superfluous.

I.

CLAIMS OF AMERICAN CITIZENS IN THEIR ORIGIN AND HISTORY.

THE history of French spoliations on our commerce is a gloomy chapter, where a friendly power, assuming the name of Republic, shows itself fitful, passionate, and unjust. This conduct is more remarkable, when it is considered, that, only a short time before, France, while yet a kingdom, contributed treasure and blood to sustain our national independence. And yet an explanation may be found in the extraordinary temper of the times. By a generous uprising of the people the kingdom was overthrown, and then, as the alarmed royalties of Europe intervened, the head of the monarch was flung to them as a gage of battle. The gage had been accepted in advance, and all those royalties, by successive treaties, entered into coalition against France. The fleets of England came tardily into the great contest, but their presence gave to it a new character, and enveloped ocean as well as land in its flames. The growing commerce of the United States suffered from both sides, but especially from France, driven to frenzy by the British attempt, in the exercise of belligerent rights, to starve a whole nation.

French feelings were still further aroused against the United States, when, instead of friendship and alliance, France was encountered by the Proclamation of Neutrality launched by Washington on the 22d April, 1793, where he undertook, in behalf of the United States, to "adopt and pursue a conduct friendly and impartial toward the belligerent powers."[1] Here, according to

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 249.

France, was a failure not only of that proper sympathy due from us, but even of solemn duties pledged by those early treaties which helped to secure the national independence. This failure, which became afterward the occasion of counter claims, contributed to the exasperations of the time.

An early apology, addressed to the American minister at Paris by the French Government, attests the spoliations which had begun, and discloses also their indefensible character, unless the common language spoken by the English and ourselves was a sufficient excuse. Here are the exact words: —

"We hope that the Government of the United States will attribute to their true cause the abuses of which you complain, as well as other violations of which our cruisers may render themselves guilty in the course of the present war. *It must perceive how difficult it is to contain within just limits the indignation of our marines, and, in general, of all the French patriots, against a people who speak the same language and having the same habits as the free Americans.* The difficulty of distinguishing our allies from our enemies has often been the cause of offences committed on board your vessels; all that the Administration could do is to order indemnification to those who have suffered, and to punish the guilty."[1]

Thus recklessly did these spoliations begin. The National Convention associated itself with this injustice, when, on the 9th May, 1793, only seventeen days after the Proclamation of Neutrality, but before it had arrived in France, a retaliatory decree was issued in response to the British attempt at starvation, — arresting all neutral vessels laden with provisions and destined to an enemy

[1] French Minister of Foreign Affairs to Mr. Morris, Oct. 14, 1793 : Senate Documents, 19th Cong. 1st Sess., No. 102, p. 70.

port. The decree itself did not disguise that it was a violation of neutral rights; but the necessity of the hour was pleaded, *and indemnity was promised to neutrals suffering by its operation.*[1] Unwilling to await the dilatory performance of this promise, our minister at Paris remonstrated against the application of the decree to vessels of the United States. Amidst vacillations of the National Convention, which, under the urgency of our minister, at one time seemed to relent, the decree continued to be enforced against property of American citizens. Here were spoliations, confessed at the time to be in violation of neutral rights, which still rise in judgment.

As this intelligence reached the United States, our whole commerce was fluttered. Merchants hesitated to expose ships and cargoes to such cruel hazards. It was necessary that something should be done to enlist again their activity. The National Government *came forward voluntarily,* with assurance of protection and redress, in a circular letter, dated 27th August, 1793, when Mr. Jefferson, the Secretary of State, in the name of the President, used the following language: "I have it in charge from the President to assure the merchants of the United States concerned in foreign commerce or navigation, that due attention will be paid to any injuries they may suffer on the high seas or in foreign countries, contrary to the Law of Nations or to existing treaties, and that, on their forwarding hither well-authenticated evidence of the same, *proper proceedings will be adopted for their relief.*"[2] This circular was confirmed by President Washington, in his message of

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 43.
[2] Ibid., p. 217.

December 5, 1793, where he speaks as follows: "The *vexations and spoliation* understood to have been committed on our vessels and commerce by the cruisers and officers of some of the belligerent powers appeared to require attention. The proofs of these, however, not having been brought forward, the description of citizens supposed to have suffered were notified, that, on furnishing them to the Executive, *due measures would be taken to obtain redress of the past* and more effectual provisions against the future."[1] Here, then, was a double promise from the National Government, and under its encouragement our merchants resumed their commerce, venturing once more upon the ocean. Their Government had tempted them, and, on the occurrence of "injuries on the high seas," these good citizens, according to instructions, made haste to lodge with the Department of State the "well-authenticated evidence of the same." Their children and grandchildren are waiting, even now, the promised redress.

Thus, at the very beginning, these spoliations were recognized by both Governments in their true character. The National Convention, even in its arbitrary edict, confessed them. The Administration of Washington, in its solemn assurance of protection, also confessed them. Offspring of wrongful violence in the heat of war, they were regarded on both sides as indefensible. Ministers, in this respect, reflected the sentiments of the two Governments. Fauchet, the French minister at Philadelphia, in a communication to the Secretary of State, under date of March 27, 1794, expressed himself in this manner: "If any of your merchants have suffered any injury by the conduct of our privateers, (a thing which

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 253.

would be contrary to the intention and express orders of the Republic,) they may with confidence address themselves to the French Government, which will never refuse justice to those whose claims shall be legal."[1] Mr. Morris, our minister at Paris, under date of March 6, 1794, gave vent to his feelings: "These captures create great confusion, *must produce much damage to mercantile men*, and are a source of endless and well-founded complaint. Every post brings me piles of letters about it from all quarters, and I see no remedy. . . . . In the mean time, if I would give way to the clamors of the injured parties, I ought to make demands very like a declaration of war."[2] But M. Buchot, the French Commissioner of Foreign Relations, addressed Mr. Morris the following soothing words, under date of July 5, 1794: "The sentiments of the Convention and of the Government towards your fellow-citizens are too well known to you to leave a doubt of *their dispositions to make good the losses which the circumstances inseparable from a great revolution may have caused some American navigators to experience*."[3] Such was the testimony, at that day, of ministers on both sides.

Meanwhile, Genet, the French minister, was recalled, at the instance of President Washington, on account of presumptuous interference in our affairs, especially hostile to the Proclamation of Neutrality; and John Jay reached London to negotiate the treaty of 1794 which goes under his name. The latter event added to the exasperation of France. But Mr. Monroe, who took the place of Mr. Morris at Paris, was full of sympathy for the new republic, even when he frankly

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 263.
[2] Ibid., p. 77.
[3] Ibid., pp. 77, 78.

discharged his unpleasant duties. In a communication to the Committee of Public Safety, under date of October 18, 1794, he exposed "a frightful picture of difficulties and losses, equally injurious to both countries, and which, if suffered to continue, will unavoidably interrupt for the time the commercial intercourse between them."[1] Notwithstanding this strong language, his influence was thought to have prevailed so far that President Washington ventured to announce, in a confidential message of February 28, 1795, good news for our plundered merchants. "It affords me," he said, "the highest pleasure to inform Congress that perfect harmony reigns between the two republics, *and that those claims are in a train of being discussed with candor, and of being amicably adjusted.*"[2] This perfect harmony was short-lived, and the hopes flowering from it were nipped.

The rumor of Mr. Jay's negotiations with England had already produced uneasiness in France; but when the treaty, on its ratification, in October, 1795, was finally divulged, there was an outburst against us. The treaty was pronounced to be in violation of existing engagements with France, and our whole policy was openly branded by the President of the Directory, in reply to Mr. Monroe, as a "condescension of the American Government to the wishes of its ancient tyrants."[3] The Directory refused to receive Charles Cotesworth Pinckney, sent by our Government in place of James Monroe. Meanwhile, by a succession of cruel edicts, it unleashed all its cruisers to despoil our commerce, and cry havoc wherever they sailed. On the 2d July, 1796,

[1] American State Papers, Foreign Relations, Vol. I. p. 683.
[2] Ibid., p. 469. [3] Ibid., p. 747.

it was declared that "the French Republic will treat neutral vessels, either as to confiscation, as to searches, or capture, *in the same manner as they shall suffer the English to treat them.*"[1] The indefinite terms of this edict were justly denounced by our Government, as "giving scope for arbitrary constructions, and consequently for unlimited oppression and vexation."[2] These results were soon manifest. With contagious injustice, the French commissioners at San Domingo reported to the Government at home, "that, having found no resource in finance, and knowing the unfriendly disposition of the Americans, and to avoid perishing in distress, they had armed for cruising, and that already eighty-seven cruisers were at sea, and that for three months preceding the Administration had subsisted and individuals been enriched with the products of those prizes."[3] So extensively did this brutality prevail, that it was announced that American vessels "no longer entered the French ports, *unless carried in by force.*"[4]

This spirit of hostility broke forth in another edict of the Directory, which became at once a universal scourge to American commerce. This fulmination, bearing date March 2, 1797, after enlarging the list of contraband, and ordaining other measures of rigor, proceeds to declare all American vessels lawful prize, if found without a *rôle d'équipage*, or *circumstantial list* of the crew:[5] all of which was in violation of existing treaties, and also of American usage, which notoriously did not require, among a ship's papers, any such list. No edict was so comprehensive in its sweep; for, as all our vessels

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 149.
[2] Report of the Secretary of State, Jan. 18, 1799: Ibid., p. 434.
[3] Ibid., pp. 434, 435. [4] Ibid., p. 435. [5] Ibid., p. 163.

were without this safeguard, they were all defenceless. Numberless spoliations ensued, so absolutely lawless and unjust that John Marshall did not hesitate to record of them in his journal, under date of December 17, 1797, "The claims of the American citizens for property captured and condemned for want of a *rôle d'équipage*" constituted "*as complete a right as any individuals ever possessed.*"[1] This right, thus complete, according to the judgment of our great authority, enters into a large part of the claims still pending before Congress.

As if to perfect this strange, eventful history, a third edict, at once inhospitable and unjust, was launched by the Directory, January 18, 1798, prohibiting "every foreign vessel which in the course of her voyage shall have entered into an English port from being admitted into a port of the French Republic, except in case of necessity, and, still further, handing over to condemnation "every vessel found at sea loaded in whole or in part with merchandise the production of England or of her possessions."[2] This edict was promptly denounced by the American plenipotentiaries newly arrived at Paris. In earnest, vigorous tones, they said that it invaded at the same time the interests and the independence of neutral powers, — *that it took from them the profits of an honest and lawful industry,* as well as the inestimable privilege of conducting their own affairs as their own judgment might direct, — and that acquiescence in it would establish a precedent for national degradation, authorizing any measures power might be disposed to practise.[3] Our plenipotentiaries depicted the spirit in which French spoliations had their origin, and

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 471.
[2] Ibid., p. 377. [3] Ibid., p. 484.

the humiliating consequences of submission to the outrage; but the personal sufferers are, down to this day, without redress.

Perplexed and indignant, the United States constituted a special mission of three eminent citizens, Mr. Pinckney, Mr. Marshall, and Mr. Gerry, who were charged to secure indemnity for these spoliations. In his elaborate instructions, dated July 15, 1797, the Secretary of State, Mr. Pickering, lays down the following rule of conduct: "In respect to the depredations on our commerce, the principal objects will be to agree on an equitable mode of examining and deciding the claims of our citizens, and the manner and periods of making them compensation. . . . . The proposed mode of adjusting those claims, by commissioners appointed on each side, is so perfectly fair, we cannot imagine that it will be refused." Although this reparation was not made "an indispensable condition of the proposed treaty," yet the plenipotentiaries were enjoined "not to renounce these claims of our citizens, *nor to stipulate that they be assumed by the United States as a loan to the French Government.*"[1] Thus fully were these claims recognized at the time by our Government, and most carefully placed under the protection of our plenipotentiary triumvirate.

The triumvirate found the French Republic in no mood of justice. Bonaparte was then triumphant at the head of the army of Italy, and Talleyrand was exhibiting his remarkable powers at the head of the foreign relations of France. Victory had given confidence, and the exulting Republic was standing tiptoe, more disposed to strike than negotiate, unless it

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, pp. 454, 455.

could dictate, and implacable always towards England and all supposed to sympathize with that power. After exactions and humiliations hard to bear, the plenipotentiaries were compelled to return home without any official reception by the intoxicated Government to which they were accredited, but not before they had encountered the masterly ability of Talleyrand, who, in reply to their statement of the claims of the United States, presented the counter claims of France. Though in Paris merely on sufferance, they had unofficial interviews with various agents of the Republic, and even with Talleyrand himself; but without dwelling on details not pertinent to the occasion, it is enough to say, that, while refusing to offer a loan or bribe, they were able to declare frankly "that France had taken violently from America more than fifteen millions of dollars, and treated us in every respect as enemies";[1] and also to receive from Talleyrand a concession, recorded in one of their despatches, that "some of those claims were probably just," with the inquiry, "whether, if they were acknowledged by France, we could not give a credit as to the payment, — say, for two years?"[2] Here again was an admission not to be forgotten.

The return of our disappointed plenipotentiaries was aggravated by circumstances which an eminent Continental writer has not hesitated to brand as "unique in the annals of diplomacy."[3] They had been invited to contribute a *gratification* of twelve hundred thousand francs, and the whole desperate intrigue, conducted by persons known in the correspondence as W, X, Y, Z, was

[1] American State Papers, Foreign Relations, Vol. II. p. 163.
[2] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 487.
[3] Garden, Traités de Paix, Tom. VI. p. 120.

unveiled to the world. The country was indignant, and war seemed imminent. By various acts of legislation Congress entered upon preparations, summoning Washington from retirement to gird on his sword once more as Lieutenant-General. The claims for French spoliations were never absent from mind. By Act of the 28th May, 1798, public vessels of the United States were authorized to capture all "armed vessels sailing under authority or pretence of authority from the Republic of France," "*which shall have committed,* or which shall be found hovering on the coasts of the United States for the purpose of committing, *depredations on the vessels belonging to citizens thereof*"; and this statute was introduced by a preamble asserting "*depredations on the commerce of the United States,* . . . . in violation of the Law of Nations and treaties between the United States and the French nation." By Act of June 13, 1798, all commercial intercourse was suspended between the United States and France, until "the Government of France . . . . shall clearly disavow, and shall be found to refrain from, *the aggressions, depredations, and hostilities which have been and are by them encouraged and maintained against the vessels and other property of the citizens of the United States.*" By Act of June 25, 1798, merchant vessels of the United States were authorized to resist search or seizure by any French armed vessel, to repel assaults, and to capture the aggressors, until "the Government of France . . . . shall disavow, and shall cause the commanders and crews of all armed French vessels *to refrain from, the lawless depredations and outrages hitherto encouraged and authorized by that Government against the merchant vessels of the United States.*" By Act of July 7, 1798, the treaties with France were de-

clared to be no longer obligatory on the United States; and this statute was introduced by a preamble asserting that "*the just claims of the United States for reparation of injuries* have been refused, and their attempts to negotiate an amicable adjustment of all complaints between the two nations have been repelled with indignity." Thus, by express words, in repeated acts, did Congress recognize these claims.

By such vigorous measures were the rights of these claimants asserted, while the country assumed an attitude of defence. The French Directory became less intolerable, and negotiations were invited again, with assurance that the former rudeness should not be renewed. John Adams was President, and for the sake of peace he seized the opportunity of this overture, by appointing Chief Justice Ellsworth, Patrick Henry, and William Vans Murray as a second plenipotentiary triumvirate to France. As Mr. Henry declined, Mr. Davie, of North Carolina, was substituted in his place. In adjusting the instructions President Adams himself took a personal part, as appears by a letter to the Secretary of State, where he says: "The principal points, *indeed all the points,* of the negotiation were so minutely considered and *approved by me and all the heads of department* that nothing remains but to put them into form and dress: this service I pray you to perform as promptly as possible."[1] But "all the points" were three only: 1st, Indemnity for spoliations of American commerce; 2d, The unquestionable wrong of seizing American vessels for want of the paper known to French law as *rôle d'équipage*; 3d, The refusal to renew the treaty guaranty of the French West Indies.

[1] Adams's Works, Vol. I. p. 553.

Such were the *ultimata* originally settled by the President and his cabinet on the 11th of March, 1799, and afterwards fully developed in the elaborate instructions of Mr. Pickering, dated 22d October, 1799, which, after announcing that "the conduct of the French Republic would well have justified an immediate declaration of war on the part of the United States," proceeded to declare, as the first point, that the plenipotentiaries, "*at the opening of the negotiation,* will inform the French ministers that the United States expect from France, *as an indispensable condition of the treaty,* a stipulation to make to the citizens of the United States *full compensation for all losses and damages* which they shall have sustained by reason of irregular or illegal captures or condemnations of their vessels and other property." And the instructions end, as they began, by declaring, first among the terms, "that an article be inserted for establishing a board with suitable powers to hear and determine the claims of our citizens, *and binding France to pay or secure payment of the sums which shall be awarded.*"[1] Observe the positiveness of the assertion.

These instructions attest the interest of our Government. Placed first among the *ultimata* adopted in the councils of President Adams, these indemnities were placed first in the diplomatic instructions. There is yet other evidence of the character and amount of the spoliations. The Secretary of State, in a report to Congress, dated January 18, 1799, after attributing them to French feeling on account of the British treaty, proceeds to characterize them in remarkable words: "Yet that treaty had been made by the French Government

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, pp. 562, 575.

its chief pretence for those unjust and cruel depredations on American commerce which have brought distress on multitudes and ruin on many of our citizens, and occasioned *a total loss of property to the United States of probably more than twenty millions of dollars.*"[1] Such were the outrages for which our plenipotentiaries were to seek redress.

The Directory had ceased; but on reaching Paris the plenipotentiaries were cordially received by Talleyrand, the citizen minister of Foreign Affairs, who without delay presented them to the First Consul as he was about to mount for that wonderful campaign which, opening with the passage of the Alps, closed at Marengo. Negotiations commenced at once, Joseph Bonaparte, elder brother of the First Consul, and afterward King of Spain, being at the head of the commission on the part of France. "Appreciating," as they announced, "the value of time," the American plenipotentiaries, in a brief note, on the 7th of April, — the very day when the exchange of powers was completed, — proposed "an arrangement *to ascertain and discharge the equitable claims of the citizens* of either nation upon the other, whether founded on contract, treaty, or the Law of Nations"; all of which was to be done in order "to satisfy the demands of justice, and render a reconciliation cordial and permanent."[2] Thus instantly were these claims presented. The French plenipotentiaries in their prompt reply admitted that "*the first object* of the negotiation ought to be the determination of the regulations, and the steps to be followed, for *the estimation and indemnification of injuries for which either nation may make*

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 430.
[2] Ibid., pp. 580, 581.

claim for itself or for any of its citizens."[1] Here was the suggestion of claims, not only "individual," but also "national," under which loomed the counter claims of France.

The American plenipotentiaries, while professing to be free from "apprehension of an unfavorable *balance*," protested against the consideration of any "national" claims until some "convenient stage of the negotiation, after it shall be seen what arrangement would be acceptable for *the claims of citizens*."[2] The French plenipotentiaries rejoined by enforcing "national" as well as "individual" claims.[3] The issue seemed to be made. On the one side were the "individual" claims of American citizens, on the other side the "national" claims of France. The American plenipotentiaries were not authorized to recognize the "national" claims alone. The French plenipotentiaries were not authorized to recognize the "individual" claims, without a previous recognition on our part of the "national" claims. At last, after various efforts at harmony, it was officially announced that "the negotiation was at a stand on the part of France," as her plenipotentiaries were constrained by instructions of the First Consul to make "the acknowledgment of former treaties the basis of negotiation *and the condition of compensation*."[4] The First Consul was then on the Italian slope of the Alps, about to pounce upon the astonished Austrians. Claims and counter claims were of little concern to him.

Thus far the Committee have exhibited our claims in their origin and history. The time has come to change the scene, and to exhibit those counter claims which

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 581.
[2] Ibid., p. 582. [3] Ibid., p. 583. [4] Ibid., p. 609.

played such part in the successive negotiations, and finally produced that memorable *dead-lock*, when the two powers stood face to face with antagonist pretensions, unable to go forward, and unwilling to go backward.

II.

COUNTER CLAIMS OF FRANCE, THEIR ORIGIN AND HISTORY.

THE counter claims of France differ widely from the claims of American citizens. They were not "individual," but "national," being founded on alleged violations of treaty stipulations assumed by the United States in return for the aid of France in the establishment of national independence. During the protracted controversy between the two republics they were detailed in numerous official notes; but they were brandished by Talleyrand, with offensive skill and effect, in the very faces of our insulted plenipotentiaries, under date of March 18, 1798, when, while driving them from Paris, he insisted "that *the priority of grievances and complaints belonged to the French Republic*," and "that these complaints and these grievances were as real as numerous, long before the United States had the least grounded claim to make."[1] Careful inquiry enables us to see that this allegation, thus confidently uttered, was not without a certain foundation; and here we revert to the history of our country.

The triumph with which the War of Independence happily ended came tardily, after seven years of battle, suffering, and exhaustion; but it was hastened, if not as-

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 490.

sured, by the generous alliance of France. From Bunker Hill to Saratoga the war was checkered with gloom, which even the surrender of Burgoyne did not suffice to dispel. Then came the dreary winter of Valley Forge, when soldiers of Washington, after treading the snows barefoot, were obliged, for want of blankets, to huddle all night by the fires, and even the stout heart of the commander-in-chief bent so far as to announce, in formal letter to Congress, that, "unless some great and capital change suddenly takes place, the army must inevitably be reduced to one or other of these three things, — starve, dissolve, or disperse." [1] But the scene changed with the glad tidings that France, by solemn treaty, signed by Franklin, February 6, 1778, had bound herself to "guaranty to the United States their liberty, sovereignty, and independence, absolute and unlimited." The camp broke forth with the mingled joy of soldier and patriot, as it turned gratefully to Lafayette, already by the side of Washington, glorious forerunner of armies and navies promised to our cause. Congress took up the strain, and, by unanimous vote, ratified the treaty which opened to our country the gates of the Future.

It is difficult to estimate the value of this treaty in money, especially when we consider its consequences. According to the report of Calonne, the French Minister of Finance, the war which ensued in the support of this guaranty cost France fourteen hundred and forty millions of francs, or about two hundred and eighty millions of dollars. But French blood, more costly than money, was shed on land and sea in the same cause, until at last the army of Cornwallis surrendered at York-

[1] To the President of Congress, December 23, 1777: Writings, ed. Sparks, Vol. V. p. 197.

town to the allied forces of Rochambeau and Washington, and the war closed by the recognition of our national independence. If liberty be priceless, if life be priceless, then was the aid lavished by France infinite beyond calculation.

The engagements were not all on the side of France. Beyond gratitude due for this powerful alliance, were express obligations solemnly assumed by the United States, not only in the Treaty of Alliance, but also in the Treaty of Amity and Commerce negotiated on the same day. These obligations, constituting the consideration of the weighty contract, were of two classes: first, a guaranty by the United States of the possessions of France in America; and, secondly, important privileges for the armed ships of France, with a promise of American convoy to French commerce.

1. The terms of the guaranty are as follows: —

"The two parties guaranty, *mutually*, from the present time *and forever*, against all other powers, to wit: The United States to His Most Christian Majesty, *the present possessions of the crown of France in America*, as well as those which it may acquire by the future treaty of peace; and His Most Christian Majesty guaranties, on his part, to the United States, *their liberty, sovereignty, and independence, absolute and unlimited*, as well in matters of government as commerce, and also their possessions, and the additions or conquests that their Confederation may obtain during the war from any of the dominions now or heretofore possessed by Great Britain in North America."[1]

To fix more precisely the sense of this article, it was further stipulated, that, —

"*In case of a rupture* between France and England, the

[1] Treaty of Alliance, Art. XI.: U. S. Statutes at Large, Vol. VIII. p. 10.

reciprocal guaranty shall have its full force and effect the moment such war shall break out; and if such rupture shall not take place, the mutual obligations of the said guaranty shall not commence until the moment of the cessation of the present war between the United States and England shall have ascertained their possessions."[1]

The possessions of France in America at this date were the islands of San Domingo, Martinique, Guadeloupe, St. Lucia, St. Bartholomew, Deseada, Mariegalante, St. Pierre, Miquelon, and, on the main-land, Cayenne, — each and all of which the United States guarantied to France *forever*, being a *continuing guaranty*, so far as this term of law is applicable to an international transaction, which, beginning "in case of a rupture between France and England," was operative after "the cessation of the present war between the United States and England," and was to continue "forever."

The terms of the "guaranty" are general, and it was "forever." Even if limited to *defensive* war, it would be difficult to say that France was not engaged in such a war, with the added incident that it was a war by a combination of kings to overcome a republic. France was alone, with the royalties of Europe embattled against her. Only after the execution of the King England joined this array, lending to it invincible navies. But, according to official avowals, it was what King George called "the atrocious act recently perpetrated at Paris"[2] that finally prompted the part she undertook, and her real object, in the language of Mr. Fox, was no other than "the destruction of the internal Government

[1] Treaty of Alliance, Art. XII.: U. S. Statutes at Large, Vol. VIII. p. 10.
[2] Message to Parliament, January 28, 1793: Hansard, Parliamentary History, Vol. XXX. col. 239.

of France."[1] The case was unprecedented; but it is difficult to say that it did not come under the "guaranty." The *casus fœderis* had occurred. If France did not exact performance, that is no reason why our obligations should be disowned, when, at the present moment, we are trying to arrive at some appreciation of their extent. A careful examination of the treaty shows that the "guaranty" became primarily obligatory on the occurrence of *a rupture between France and England.* Nothing is said or suggested as to the character of the war, whether offensive or defensive. It is enough that there was "a rupture." In such a case, the "guaranty," according to the illustration of Cicero, was, *tanquam gladius in vagina,* at the disposal of France. Our Secretary of State, even while seeking to limit its application, seems to have seen it prospectively in this light, when, in his instructions of July 15, 1797, to our plenipotentiaries, Messrs. Pinckney, Marshall, and Gerry, he said, "Our guaranty of the possessions of France in America will perpetually expose us to the risk and expense of war, or to disputes and questions concerning our national faith."[2]

2. The Treaty of Amity and Commerce contained a succession of mutual stipulations, by which the United States undertook, — *first,* to protect and defend by their ships of war, or convoy, any or all vessels belonging to French subjects, so long as they hold the same course, "against all attacks, force, and violence, in the same manner as they ought to protect and defend" the vessels of citizens of the United States;[3] *secondly,* to open

[1] Speech on the King's Message, February 1, 1793: Hansard, XXX. 307.
[2] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 457.
[3] Articles VI., VII.: United States Statutes at Large, Vol. VIII. p. 16.

their ports to French ships of war and privateers with their prizes, and to close them against those of any power at war with France, except when driven by stress of weather, and then "all proper means shall be vigorously used that they go out and retire from thence as soon as possible";[1] *thirdly,* according to French construction, to allow French privateers "to fit their ships, to sell what they have taken, or in any other manner whatsoever to exchange their ships, merchandise, or any other lading," while privateers in enmity with France are forbidden even to victual in ports of the United States.[2] As if to round and complete these engagements, it was further stipulated on the part of the United States, in a Consular Convention, which, after many perplexities of diplomacy baffling the tried skill of Franklin, was finally signed by Mr. Jefferson, in 1788, as a postscript to the earlier treaties, that French consuls and vice-consuls in the United States should have power and jurisdiction on board French vessels in civil matters, with the entire inspection over such vessels, their crews, and the changes and substitutions there to be made.[3]

Such, briefly recited, were the solemn engagements of the United States, sanctioned by treaties, as the price of independence. So long as France remained at peace with all the world, especially with Great Britain, these engagements slept unnoticed, but ready, at the first blast of war, to spring into life. At length the blast was heard, perhaps as never before in human history, echoing from capital to capital, and sounding a crusade of monarchical

[1] Article XVII.: United States Statutes at Large, Vol. VIII., p. 22.
[2] Article XXII.: Ibid., p. 24.
[3] Article VIII.: Ibid., p. 112.

Europe against republican France. Of all the foreign ministers at Paris, the minister of the United States alone remained: the rest had fled.

The minister of the United States saw the danger lowering upon his own country. In a letter to the Secretary of State, dated December 21, 1792, after presenting a rapid sketch of the rising of Europe against France, he adds: "The circumstance of a war with Britain becomes important to us in more cases than one"; and he then alludes to "the question respecting the *guaranty* of American possessions, especially if France should attempt to defend her islands."[1] Notoriously, Gouverneur Morris sympathized little with the French Republic, but, against all arguments for non-compliance with our original engagements, because the Government with which they were made had ceased to exist, his sensitive nature broke forth in the "wish that all our treaties, however onerous, may be strictly fulfilled according to their true intent and meaning," which he followed in language foreign to the phrases of diplomacy, by picturing "the honest nation as that which, like the honest man,

> 'Hath to its plighted faith and vow forever firmly stood;
> And though it promised to its loss, yet makes that promise good.'"[2]

In harmony with this exclamation of the plenipotentiary are the words of Vattel, an authority much quoted at the time: "To refuse an ally the succors we owe him, without any good ground of dispensation, is doing him an injury, ... and there being a natural obligation to repair the damage caused by our fault, and especially by our injustice, we are bound to indemnify an ally

[1] American State Papers, Foreign Relations, Vol. I. p. 347.
[2] Ibid.

for all the losses he may have sustained from our unjust refusal."[1]

Since the signature of the treaties times had changed, and men had changed with them. There was no bad faith on either side, in the ordinary sense of the term, but intervening events and exigencies of self-defence had driven each into unexpected inconsistencies of conduct. If on one side there was neglect of original engagements, there was on the other equal neglect of international duties. The tornado in mad career uprooted old landmarks, and each was striving to find new lines of reciprocal relations. Franklin, signing the "guaranty," did not expect so soon to call down upon his country the lightnings of an embattled world; nor did France, while formally conceding neutral rights on the ocean and assuring our national independence, expect so soon to become the plunderer of our commerce. But the great tragedy would have been less complete, if its domineering Nemesis had suffered the two republics to dwell in harmony together. They were whirled, on each side, into those questionable acts out of which have sprung the claims and counter-claims now under consideration.

A new French minister was at hand, accredited to President Washington, with fresh instructions. Differences on the obligations of the guaranty appeared in the Cabinet, — some holding that no necessity for decision existed, as France had made no demand, — and others, that, the Treaty of Alliance being plainly defensive, the guaranty did not apply to a war begun by France. After ample discussion, the Proclamation of Neutrality was adopted, April 22, 1793, destined to become a turning-

[1] Le Droit des Gens, Liv. III. ch. 6, § 94.

point in our history. Chief Justice Marshall, whose opportunities of information were unquestionable, lets us know that the Proclamation "was intended to prevent the French minister from demanding *the performance of the guaranty contained in the Treaty of Alliance.*"[1] But before the Proclamation reached France, orders were issued there for the capture and confiscation of enemy goods on board neutral vessels; whereas it was stipulated with the United States that free ships should make free goods; so that, even if the denial of the guaranty was wrong, and the Proclamation, according to French accusation, "insidious," the United States were not the first to offend.

On the day of the Proclamation came news by the journals that Genet, the new French minister, had landed in South Carolina, where, amid the darkest days of the Revolution, Lafayette had also first landed. Full of conviction that France had only to make herself heard in order to be sustained, Genet exalted himself conspicuously above the Government. By instructions from the Executive Council of the French Republic, dated 17th of January, 1793, he was enjoined "to penetrate profoundly the sense of the treaties of 1778, and to watch over the articles favorable to the commerce and navigation of the United States, and to make the Americans consider engagements which might appear onerous *as the just price of the independence which the French nation had secured to them.*" Not content with existing safeguards, the new minister was to negotiate a supplementary treaty, to fix more surely "the *reciprocal guaranty* of the possessions of the two powers."[2] In this spirit he commenced a

[1] Report of Mr. Livingston on the French Spoliations, February 22, 1830: Senate Documents, 21st Cong. 1st Sess., No. 68, p. 5.

[2] Gebhardt's American and French State Papers, Vol. I. pp. 9, 10.

turbulent career, charging offensively that the President, before knowing what the minister had to communicate from the French Republic, was in a hurry "to proclaim sentiments on which decency and friendship should at least have drawn a veil," — that he "took on himself to give to our treaties arbitrary interpretations absolutely contrary to their true sense," and that "he left no other indemnification to France for the blood she spilt, for the treasure she dissipated, in fighting for the independence of the United States, but the illusory advantage of bringing into their ports the prizes made on their enemies without being able to sell them," — and that the Secretary of War, on his communication of the wish of the Windward Islands "to receive promptly some fire-arms and some cannon, which might put into a state of defence *possessions guarantied by the United States*, had the front to answer, with an ironical carelessness, that the principles established by the President did not permit him to lend so much as a pistol."[1] In another letter, the French minister, under date of June 8, 1793, requires that "the Federal Government should observe the public engagements contracted, and give to the world the example of a true neutrality, which does not consist in the cowardly abandonment of friends at the moment when danger menaces."[2] And in still another letter, dated June 22, 1793, he declares that "it is in the conventional compacts, collectively, that we ought to seek contracts of alliance and of commerce simultaneously made, if we wish to take their sense and interpret faithfully the intentions of the people who

[1] Letter to Mr. Jefferson, September 18, 1793: American State Papers, Foreign Relations, Vol. I. pp. 173, 174.

[2] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 193.

cemented them, and of the men of genius who dictated them." [1] All of which was followed by another letter, dated November 14, 1793, in which the minister says categorically: "I beg you to lay before the President of the United States, as soon as possible, the decree and the inclosed note, and to obtain from him the earliest decision, *either as to the guaranty I have claimed the fulfilment of for our colonies*, or upon the mode of negotiation of the new treaty I was charged to propose to the United States, and which would make of the two nations but one family." [2] At last Genet was recalled, but the question of our engagements with France could not be dismissed. It was more menacing than any minister. Without it all the turbulence of Genet would have been as the idle wind.

And yet, for a while, each party seems to have practised a certain reserve. Genet stormed, but the Government at home was tranquil. The "guaranty" was suspended, even in discussion. France forbore to press it, and the United States were happy to avoid the overshadowing question. The Secretary of State, in instructions to Mr. Monroe, dated June 10, 1794, while "insisting upon compensation for the captures and spoliations of our property and injuries to the persons of our citizens by French cruisers," was careful to add: "If the execution of the *guaranty* of the French islands by force of arms should be propounded, you will refer the Republic of France to this side of the water." [3] Mr. Monroe, in his correspondence, under date of September 15, 1794, says: "This Republic had declined calling on us to execute the guaranty, from a spirit of magnanimity,

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 199.
[2] Ibid., p. 231.
[3] Ibid., pp. 78, 79.

and strong attachment to our welfare"; but he reveals his anxiety lest an attempt to press our case "might give birth to sentiments of a different kind, and *create a disposition to call on us to execute that of the Treaty of Alliance.*"[1] In another letter, dated November 7, 1794, describing an interview with the very able Diplomatic Committee, our plenipotentiary confesses the embarrassment he encountered, when M. Merlin three times asked, "Do you insist upon *our* executing the treaty?" and he gives his reply, that he "was not instructed by the President to insist on it, nor did he insist on it"; and he avows that in his opinion such insistence would have been impolitic, as "exciting a disposition to press us on other points, *upon which it were better to avoid any discussion.*"[2] There is other testimony of this nature, unnecessary to produce. Suffice it to say, that for some time there was a lull, soon to be followed by a storm.

French forbearance is more remarkable, when it is considered that the occasion for the "guaranty" had begun to be urgent. Even before Howe's great victory of June, over the French fleet, the British navy swept the sea, rendering all French possessions insecure. Martinique, San Domingo, St. Lucia, and Guadeloupe were lost to the Republic in the spring of 1794, so that the British historian has written: "Thus, in little more than a month, the French were entirely dispossessed of their West India possessions, with hardly any loss to the victorious nation."[3] But the "guaranty" was invoked by the impatient colonists, who, without waiting the slower movement of the French Republic, appealed

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 84.
[2] Ibid., pp. 86, 87.
[3] Alison, History of Europe (Edinburgh, 1844), Vol. II. p. 767, Ch. 16.

directly to our Congress for "divers necessary succors, of provision, ammunition, and even men," and in impassioned language pictured "England come to take possession of the French colonies in the name of a king without dominions, and North America, witness to that political perfidy, not able to lend a helping hand against an unworthy treachery." [1] The French Government at home did not share the fury of the colonists. According to Mr. Monroe, in his letter of December 2, 1794, whatever may have been their desires at a previous stage, they did not now wish us to "embark with them in the war," but "would rather we would not, from an idea it might diminish their supplies from America," and "if the point depended on them, they would leave us to act in that respect according to our own wishes"; at the same time they looked to us for "aid in the article of money." [2] This moderation, although a temporary waiver, was in no respect a renunciation of rights. According to Mr. Jefferson, in a letter written some months after his retirement from the Cabinet, and addressed to Mr. Madison, under date of April 3, 1794, the "guaranty" was still obligatory. "As to the guaranty of the French islands," he wrote, "whatever doubts may be entertained of the moment at which we ought to interpose, yet *I have no doubt but that we ought to interpose at a proper time*, and declare both to England and France that these islands are to rest with France, and that we will make *a common cause* with the latter for that object." [3] Such was American testimony.

[1] Commission of Guadeloupe to the Congress of the United States, November 6, 1793: American State Papers, Foreign Relations, Vol. I. p. 326.

[2] American State Papers, Foreign Relations, Vol. I. p. 688.

[3] Writings, Vol. IV. pp. 102, 103.

The West India islands were lost without causing an apparent smart at home; but it was different, when the news came of Mr. Jay's negotiation in England. The Republic was stung to the quick, and, when the treaty became known, did not conceal its indignant anger. In a formal note, dated March 9, 1796, it set forth its complaints, dwelling especially upon the "inexecution of the treaties," and upon the formation of the recent treaty with Great Britain, in which the United States "knowingly and evidently sacrificed their connections with the Republic."[1] In conversation with Mr. Monroe, the French minister said "that France had much cause of complaint against us, independently of our treaty with England, but that by this treaty ours with them was annihilated."[2] The year closed with the recall of Mr. Monroe, and with a notice from the French Government "that it will no longer recognize nor receive a Minister Plenipotentiary from the United States, *until after a reparation of the grievances demanded of the American Government,* and which the French Republic has a right to expect"; and then, adding ingratitude to the list of our offences, it declared an equal expectation "that the successors of Columbus, Raleigh, and Penn, always proud of their liberty, will never forget that *they owe it to France.*"[3] Meanwhile, M. Adet, the French plenipotentiary in Philadelphia, was addressing our Government in similar strain, calling for the discharge of our engagements, and heaping reproaches: "The undersigned, Minister Plenipotentiary of the French Republic, now fulfils to the Secretary of State

[1] American State Papers, Foreign Relations, Vol. I. pp. 658, 659.
[2] Mr. Monroe to the Secretary of State, February 20, 1796: Ibid., p. 731.
[3] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 150.

of the United States a painful, but sacred duty. *He claims, in the name of American honor, in the name of the faith of treaties, the execution of that contract which assured to the United States their existence,* and which France regarded as the pledge of the most sacred union between two people the freest upon earth." And he charges the Government of the United States with "sacrificing France to her enemies," "forgetting the services that she had rendered it," and "throwing aside the duty of gratitude, as if ingratitude was a Governmental duty."[1] From this time forward the claims of the United States never failed to encounter the counter-claims of France.

The mutual coquetry which characterized the two Governments during the mission of Mr. Monroe gave way to mutual recrimination and repulsion, where France took the lead. M. Adet was recalled from Philadelphia. Mr. Pinckney was sent away from Paris. Besides the earlier decree, announcing that the Republic would treat all neutrals in the same manner as they suffered the English to treat them, other fatal blows were now dealt at our commerce, letting loose a new brood of spoliations destined to swell the catalogue of our claims, by a decree pronouncing the stipulations of the treaty of 1778 which concerned the neutrality of the flags altered and suspended in their most essential points by the treaty with England, greatly enlarging the list of contraband, declaring Americans in the service of England pirates, and authorizing the seizure of all American vessels without a *rôle d'équipage,* which, notoriously, no American vessel ever carried, so that practically

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, pp. 354, 367.

our flag was delivered over to the depredations of every French cruiser.[1]

Then came that plenipotentiary triumvirate, Messrs. Pinckney, Marshall, and Gerry, who were particularly instructed by our Government, while urging the multiplied claims of our citizens, already valued at "more than twenty millions of dollars," to propose "a substitute for the reciprocal guaranty," or, "if France insists on the mutual guaranty, to aim at some modification of it," — "instead of troops or ships of war, to stipulate for a moderate sum of money or quantity of provisions, at the option of France: the provisions to be delivered at our own ports, in any future *defensive* wars; the sum of money, or its value in provisions, not to exceed two hundred thousand dollars a year, during any such wars."[2] Here was recognition of the "guaranty," and a sum offered for release from its requirements. But the French Republic, drunk with triumph and maddened with anger, was in no mood for negotiation. It met our plenipotentiaries with an intrigue already mentioned as unparalleled in diplomacy, and, after tolerating their presence for a while at Paris, without conceding an official reception, sent them away, disappointed and dishonored. Even in the informal relations which were permitted, Talleyrand, in the name of the Republic, advanced and vindicated the counter-claims of France. Without dwelling at length on his argument, it is enough to quote certain words in a letter to Mr. Gerry, of June 10, 1798: "*The French Republic desires to be restored to the rights which its treaties with your Republic confer upon it, and through those means it desires to as-*

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 163.
[2] Ibid., pp. 430, 457, 458.

sure yours. You claim indemnities; it equally demands them; and this disposition, being as sincere on the part of the Government of the United States as it is on its part, will speedily remove all the difficulties."[1] Thus plainly was the case stated. It was not denied that indemnities were due to the United States, but it was insisted that they were also due to France.

The two countries, once allies, were now in the most painful relations. Washington was no longer President; but his Farewell Address, in some of its most important parts, was evidently inspired by the counter-claims of France, especially when he warned his fellow-countrymen "to steer clear of *permanent alliances* with any portion of the foreign world, *so far as we are now at liberty to do it*," — "to have with foreign nations as little *political* connection as possible," — "to be constantly awake against the insidious wiles of foreign influence," — and then asked in well-known words, "Why quit our own, to stand upon foreign ground? Why, by *interweaving our destiny with that of any part of Europe*, entangle our peace and prosperity in the toils of European ambition, rivalship, interest, humor, or caprice?"[2] In these remarkable words, where the same tone, if not the same lesson, recurs, we discern the undissembled anxieties of the hour. By the guaranty and other stipulations of 1778, our peace and prosperity had been entangled, even if our destiny had not been interwoven, in distant toils. France was urgent and brutal. War seemed impending. At last another triumvirate of plenipotentiaries, Messrs. Ellsworth, Davie, and Murray, was commissioned to attempt again the adjustment of com-

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 529.
[2] Writings, ed. Sparks, Vol. XII. pp. 230–232.

plications that had thus far baffled the wisdom of Washington; but compensation for the "individual" claims of American citizens was required as an indispensable condition.

Such are the counter-claims of France in origin and history. And now again we are brought to the very point where the Committee had arrived in exhibiting the claims of our citizens. The plenipotentiaries on each side have met to negotiate, while the First Consul has gone to Marengo. On each side they are equally tenacious. There is a dead-lock. How this was overcome belongs to the next chapter.

III.

ADJUSTMENT BETWEEN THE UNITED STATES AND FRANCE BY THE SET-OFF AND MUTUAL RELEASE OF CLAIMS AND COUNTER-CLAIMS.

THE rules of duty and of conduct between individuals are applicable also to nations, and the proceedings on this occasion illustrate this principle. The two parties could not agree. Clearly, then, for the sake of harmony, it was essential to postpone both claims and counter-claims, for some future negotiation, or, if this were not done, to treat them as a set-off to each other. Such, unquestionably, would have been the action between individuals. But the history of this negotiation shows the adoption of these two modes successively. Postponement was first tried, but it gave way at last to *set-off*, by virtue of which the *international* controversy was closed. This conclusion was reached slowly and by stages, as is seen in a simple narrative of the negotiation.

The plenipotentiaries on each side evinced a disposition to provide for reciprocal claims; but the claims specified by the American plenipotentiaries were those of "*citizens* of either nation," while those specified by the French plenipotentiaries were those which "either nation may make for *itself* or for any of its citizens."[1] In this difference of specification was the germ of the antagonism soon developed, especially when the American plenipotentiaries proposed to recognize the treaties and Consular Convention as existing only to July 7, 1798,[2] the date of the statute by which Congress undertook to annul them. This distinction seems to have been unnecessary, for the French spoliations were clearly as much in contravention of the Law of Nations as of the treaties. But it furnished the French plenipotentiaries opportunity of declaring, under date of May 6, 1800, that "the mission of the Ministers Plenipotentiary of the French Republic has pointed out to them the Treaties of Alliance, Friendship, and Commerce, and the Consular Convention, *as the only foundations of their negotiations*"; that "upon these acts has arisen the misunderstanding, and it seems proper that upon these acts union and friendship should be established."[3] Thus were the treaties put forward by France; and our plenipotentiaries, writing to their own Government, May 17, 1800, represent her as persistent: "Our success is yet doubtful. The French think it hard to indemnify for violating engagements, *unless they can thereby be restored to the benefits of them.*"[4] But on this point our Government was inexorable.

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 581.
[2] Ibid., p. 587. [3] Ibid., p. 591. [4] Ibid., p. 607.

The return of the First Consul from Italy was signalized by fresh instructions to the French plenipotentiaries, who proceeded to declare, under date of August 11, 1800, that "the treaties which united France and the United States are not broken," and that their first proposition is "to stipulate a full and entire recognition of the treaties, and the reciprocal engagement of compensation for damages resulting on both sides from their infraction." Here, again, the "individual" claims of citizens of the United States were doomed to encounter the "national" claims of France. And this communication concluded with a formal proposition in these words: "Either the ancient treaties, with the privileges resulting from priority and the stipulation of reciprocal indemnities, or a new treaty, assuring equality without indemnity."[1] Thus it stood: Claims and Counter-Claims.

The American plenipotentiaries were driven to choose between abandonment of the negotiations and abandonment of their instructions. It was clear, from French persistency, that the treaties, with all the counter-claims, must be recognized, or the indemnities, with all the claims, must be sacrificed. The American plenipotentiaries then took the extraordinary responsibility of a proposition which discloses not only their earnest desire for a settlement, but also their sense of pressure from France. It was nothing less than a price, in money, for release from certain stipulations; but this was to be accomplished by "a reciprocal stipulation for *indemnities limited to the claims of individuals.*"[2] The French plenipotentiaries, in reply, insisted upon recognition of

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, pp. 616–618.
[2] Ibid., p. 625.

the treaties in general terms, and also the rights of their privateers in our ports; yet they offered to commute the guaranty for a sum of money.[1] The American plenipotentiaries, hampered by the recent treaty with Great Britain, were obliged to reject this proposition; but, after requiring the satisfaction of "individual" claims, they offered, in general terms, that "the former treaties be renewed and confirmed, and have the same effect as if no misunderstanding between the two powers had intervened"; and further, that, *in consideration of eight millions of francs,* the United States should be released from the guaranty, and also from those other articles relating to prizes which had caused so much embarrassment.[2] Then the French plenipotentiaries assumed a new position in the following reply, September 4, 1800.

"*To the Ministers Plenipotentiary of the United States at Paris:* —

"We shall have the right to take our prizes into the ports of America.

"A commission shall regulate the indemnities which either of the two nations may owe to the citizens of the other.

"*The indemnities which shall be due by France to the citizens of the United States shall be paid for by the United States. And in return for which, France yields the exclusive privilege resulting from the* 17*th and* 22*d articles of the Treaty of Commerce, and from the rights of guaranty of the* 11*th article of the Treaty of Alliance.*

"Bonaparte.
"C. P. Claret-Fleurieu.
"Roederer."[3]

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, pp. 627, 628.
[2] Ibid., p. 629.
[3] Ibid., p. 630.

Here was the first proposition of *set-off*. On the one side were "indemnities due by France to citizens of the United States," and on the other side were "privileges and rights" under the treaties; but it will not fail to be remarked that *the indemnities due by France were to be paid by the United States*. This proposition proceeded on the idea that the counter-claims of France were at least equal in value to the claims of the United States, and that the release of the former was a sufficient consideration for the assumption of the latter. But this was entirely beyond the powers of the American plenipotentiaries, who, in their reply, pronounced it "inadmissible."[1] It revealed the desire of France to escape any payment of money, as only a few days later was openly avowed by the French plenipotentiaries, "giving as one reason the utter inability of France to pay, in the situation in which she would be left by the present war."[2] This declared inability served to explain the difficulties encountered by the American plenipotentiaries. Evidently there was a "foregone conclusion" against any payment by France. The counter-claims furnished the needed *substitute*. But, as these were "national," while the claims of the United States were "individual," there could be no just *set-off* between them, unless the American Government assured to its citizens the payment of what was due from France, according to the proposition of the French plenipotentiaries.

The American plenipotentiaries were disheartened. Nothing in their instructions enabled them to meet the new and unexpected turn of affairs. The treaty

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 631.

[2] Journal of American Plenipotentiaries, September 12, 1800: Ibid., p. 633.

they had striven for seemed to elude their grasp. In their journal, under date of September 13, 1800, is the record, that, "being now convinced that the door was perfectly closed against all hope of obtaining indemnities with any modifications of the treaties, it only remained to be determined whether, under all circumstances, it would not be expedient to attempt *a temporary arrangement*."[1] The French plenipotentiaries did not consider this proposition, without insisting, "first, that a stipulation of indemnities carries with it the full and entire admission of the treaties, and, secondly, that the relinquishment of the advantages and privileges stipulated by the treaties, by means of the reciprocal relinquishment of indemnities, would prove to be the most advantageous arrangement, and also the most honorable to the two nations."[2] Here, again, was a proposition of *set-off*, which was repeated in other different forms.

The dead-lock which clogged the negotiation, even at the beginning, was now complete. The American plenipotentiaries announced at home that they were driven to quit France, or to find some other terms of adjustment.[3] The latter alternative prevailed, and the negotiation was renewed, with the understanding that the parties put off to another time the discussion of indemnities and the treaties.[4] The other questions furnished no ground of serious controversy; and the conferences proceeded tranquilly, from day to day, till September 30, 1800, resulting in what was entitled a

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 634.
[2] Ibid., pp. 635, 636.
[3] Letter to Secretary of State, October 4, 1800: Ibid., p. 644.
[4] Ibid., p. 637.

"*Provisional* Treaty." The title revealing its temporary character was subsequently changed, at the request of the French plenipotentiaries, to that of "Convention," which it now bears in the statute-book.

The Convention, after declaring in its first article that "there shall be a firm, inviolable, and universal peace, and a true and sincere friendship, between the French Republic and the United States of America," proceeds to stipulate as follows.

"ART. II. The Ministers Plenipotentiary of the two parties not being able to agree at present respecting the Treaty of Alliance of 6th February, 1778, the Treaty of Amity and Commerce of the same date, and the Convention of 14th of November, 1788, nor upon the indemnities mutually due or claimed, the parties will negotiate further on these subjects at a convenient time; and until they may have agreed upon these points, the said treaties and convention shall have no operation, and the relations of the two countries shall be regulated as follows."[1]

Here the disagreement with regard to the early treaties and the indemnities mutually due or claimed is specifically declared, and it is then provided that "*the parties* will negotiate further on these subjects at a convenient time," — meaning, of course, that hereafter, at a more auspicious moment, and with other plenipotentiaries, "the parties" will attempt to reconcile this disagreement. The whole subject, with its seven years of controversy and heart-burning, was postponed. Claims and counter-claims were left to sleep, while the spirit of peace descended upon the two countries.

[1] United States Statutes at Large, Vol. VIII. p. 178.

The Convention was signed at Morfontaine, the elegant country home of Joseph Bonaparte, and the occasion was turned into a festival, — illustrated afterwards by the engraving of Piranesi, — where nothing was wanting that hospitality could supply. The First Consul was there, with his associates in power; also Lafayette, rescued from his Austrian dungeon and restored to France; and there also were the plenipotentiaries of both sides, with American citizens then in France, all gathered in brilliant company to celebrate the establishment of concord between the two republics.[1] The First Consul proposed as a toast, "*To the manes of the French and the Americans who died on the field of battle for the independence of the New World*"; so that even at this generous festival, to grace a reconciliation founded on the postponement of claims and counter-claims, the youthful chief, whose star was beginning to fill the heavens, proclaimed the undying obligations of the United States to France. This strain has been adopted by M. Thiers, who, after referring to this convention as the first concluded by the Consular Government, says: "It was natural that the reconciliation of France with the different powers of the globe should begin with *that republic to which she had in a measure given birth.*" The great historian, while thus recording our obligations to France, shows how claims and counter-claims had been postponed. "The First Consul," he says, "had allowed the difficulties relative to the Treaty of Alliance of the 6th of February, 1778, to be adjourned; but, on the other hand, he had required the adjournment of the claims of the Americans relative to captured vessels."[2]

[1] Mémoires du Roi Joseph (2me édit.), Tom. I. p. 94.
[2] Histoire du Consulat et de l'Empire, Tom. II. Liv. 7.

In this summary the stipulations at the signature of the Convention are accurately stated. Though imperfect, it was the first in that procession of peace, embracing Lunéville, Amiens, and the Concordat, which for a moment closed the Temple of Janus, whose gates had been left open by the Revolution in France.

The ratification by the First Consul followed the celebration at Morfontaine, so that the Convention, with its postponement of mutual claims, was definitely accepted by France. It was otherwise in the United States, where the result did not find favor. The postponement of a controversy is not a settlement, and here was nothing but postponement, leaving the old cloud hanging over the country, ready to burst at the motion of England or France. It was important that the early treaties, with their entangling engagements, should cease, even as a subject of future negotiation. In this spirit, the Senate, on the submission of the Convention for ratification, expunged the second article, providing that "the parties will negotiate further on these subjects," and limited the Convention to eight years. On the 18th of February, 1801, President Adams, by proclamation countersigned by John Marshall, as Secretary of State, published the Convention as duly ratified, "saving and excepting the second article," which was declared "to be expunged, and of no force or validity."[1] The precise effect of this proceeding was not explained, and it remained to see how it would be regarded in France.

Were the claims on France abandoned? This was the question which occupied the attention of our minister, Mr. Murray, when charged to exchange with France

[1] United States Statutes at Large, Vol. VIII. p. 192.

the ratifications of the Convention as amended by the Senate. Reporting to the Government at home his conference with the French plenipotentiaries, he said, "I fear that they will press an article of formal abandonment on our part, *which I shall evade.*"[1] He hoped to keep still another chance for indemnities. On the other hand, the French plenipotentiaries feared that an unconditional suppression of the second article would leave them exposed to the claims of the United States without chance for their counter-claims; but they did not object to a mutual abandonment of indemnities, which Mr. Murray admitted would "always be *set off* against each other."[2] At last the conclusion was reached, and on the 31st of July, 1801, the Convention was ratified by the First Consul, with the limitation to eight years, and with the retrenchment of the second article, according to the amendment by the Senate, the whole with a proviso by the First Consul, "THAT BY THIS RETRENCHMENT THE TWO STATES RENOUNCE THE RESPECTIVE PRETENSIONS WHICH ARE THE OBJECT OF THE SAID ARTICLE."[3] Such were the important words of final settlement. What had been left to inference in the amendment of the Senate was placed beyond question by this French proviso. Claims and counter-claims were not merely suspended; they were formally abandoned. The Convention, with this decisive modification, was submitted to the Senate by President Jefferson, and again ratified by a vote of twenty-two yeas to four nays. On the 21st of December, 1801, it was promulgated by the President in the usual form, with its

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 666.
[2] Ibid., p. 675.
[3] United States Statutes at Large, Vol. VIII. p. 194.

supplementary proviso, and all persons were enjoined to observe and fulfil the same, "and every clause and article thereof." [1]

One aspect of this result cannot fail to arrest attention. Here was a release of all outstanding obligations of the United States under those famous treaties which assured National Independence. The joy with which those heralds of triumph were first welcomed in camp and Congress has been portrayed; and now a kindred joy prevailed, when the country, anxious and sorely tried, was at last set free from their obligations, and American commerce, venturing forth again from its banishment, brought back its treasures to pour them into the lap of the people. Strange fate! There was joy at the birth of these treaties, and joy also at their death. But it was because their death had become to us, like their birth, a source of national strength and security.

Thus closed a protracted controversy, where each power was persistent to the last. Nothing could be more simple than the adjustment, and nothing more equitable, *if we regard the two Governments only.* The claims of each were treated as a *set-off* to the claims of the other, and *mutual releases* were interchanged, so that each, while losing what it claimed, triumphed over its adversary. But the triumph of the United States was at the expense of American citizens. Nothing is without price; and new duties, originating in this triumph, sprang into being.

[1] United States Statutes at Large, Vol. VIII. p. 196.

IV.

ASSUMPTION OF CLAIMS BY THE UNITED STATES, AND SUBSTITUTION OF UNITED STATES FOR FRANCE.

THEN came the assumption by our Government of the original obligations of France, and its complete *substitution* for France *as the responsible debtor.* This liability was distinctly foreseen by the American plenipotentiaries, Messrs. Pinckney, Marshall, and Gerry, as appears in their words, under date of October 22, 1797: "We observed to M. Bellamy, that none of our vessels had what the French termed a *rôle d'équipage,* and that, if we were to surrender all the property which had been taken from our citizens in cases where their vessels were not furnished with such a rôle, *the Government would be responsible to its citizens for the property so surrendered,* since it would be impossible to undertake to assert that there was any plausibility in the allegation that our treaty required a *rôle d'équipage.*"[1] This admission, so important in this discussion, was so clearly in conformity with correct principles, that it was naturally made, even without special instructions.

Had the claims been "national" on each side, no subsequent question could have occurred, for each would have extinguished the other in all respects forever. It was the peculiarity of this case, that on one side the claims were "national," and on the other side "individual." But a *set-off* of "individual" claims against "national" claims must, of course, leave that Government responsible which has appropriated the

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 467.

"individual" claims to this purpose. The set-off and mutual release are between nation and nation; but if the claims on one side are only "individual," and not "national," the nation which by virtue of this consideration is released from "national" obligations must be *substituted* for the other nation as debtor, so that every "individual" with claims thus appropriated may confidently turn to it for satisfaction. On this point there can be no doubt, whether we regard it in the light of common sense, reason, duty, Constitution, or authority.

1. According to *common sense*, any "individual" interest appropriated to a "national" purpose must create a debt on the part of the nation, still further enhanced, if, through this appropriation, the nation is relieved from outstanding engagements already the occasion of infinite embarrassment, and hanging like a drawn sword over the future.

2. According to *reason*, any person intrusted with the guardianship of particular interests becomes personally responsible with regard to them, especially if he undertakes to barter them against other interests for which he is personally responsible. Thus, an attorney, sacrificing the claims of his clients for the release of his own personal obligations, becomes personally liable; and so also the trustee, appropriating the trust fund for any personal interest, becomes personally liable. All this is too plain for argument; but it is applicable to a nation as to an individual. In the case now before your Committee, our Government was attorney to prosecute "individual" claims of citizens, and also trustee for their benefit, to watch and protect their interests; so that it was bound to all the responsibilities of at-

torney and trustee, absolutely incapacitated from any act of personal advantage, and compelled to regard all that it obtained, whatever form of value it might assume, whether money or release, as a trust fund for the original claimants.

3. *Duty*, also, in harmony with reason, enjoins upon Government the protection of citizens against foreign spoliations and the prosecution of their claims to judgment. Such are powerless as "individuals." Their claims are effective only when adopted by the nation. This duty, so obvious on general principles, was reinforced in the present case by the special undertaking of Mr. Jefferson, already adduced, when he announced that he had it "in charge from the President to assure the merchants of the United States concerned in foreign commerce or navigation, that due attention will be paid to any injuries they may suffer on the high seas or in foreign countries."[1] Such a duty, thus founded, and thus openly assumed, could not be abandoned, on any inducement proceeding from France, without a corresponding responsibility toward those citizens whose interests were allowed to suffer. A waiver of national duty, especially where made for the national benefit, must entail national obligation.

4. The *Constitution* also plainly requires what seems so obvious to common sense, reason, and duty, when it declares that "private property shall not be taken for public use *without just compensation*." Here "private property," to a vast amount, was taken for "public use," involving the peace and welfare of the whole country; and down to this day the sufferers are petitioning Con-

[1] Circular, August 27, 1793: Senate Documents, 19th Cong. 1st Sess., No. 102, p. 217.

gress for that "just compensation" solemnly promised by the Constitution.

5. *Public law* is also in harmony with the Constitution. According to Vattel, the sovereign may, in the exercise of his right of eminent domain, dispose of the property, and even the person, of a subject, by treaty with a foreign power; "but," says this eminent authority, "as it is for the public advantage that he thus disposes of them, the state is bound to indemnify the citizens who are sufferers by the transaction."[1] Words more applicable to the present case could not be employed.

6. The authority of great names confirms this liability. Among those who took part in the negotiations with France, none but Mr. Pickering and Chief Justice Marshall still lingered on the stage when the subject was finally pressed upon Congress. Mr. Pickering was Secretary of State under Washington and Adams, and drew the instructions. His testimony is explicit. Without giving his statement at length, it will be enough to quote these words, in a letter dated November 19, 1824: —

"Thus the Government *bartered* the *just claims* of our merchants on France, to obtain a relinquishment of the French claim for a restoration of the old treaties, especially the burdensome Treaty of Alliance, by which we were bound to guaranty the French territories in America. On this view of the case, it would seem *that the merchants have an equitable claim for indemnities from the United States.* . . . . It follows, then, that, if the relinquishment had not been made, the present French Government would be responsible. Consequently, the relinquishment by our own

[1] Le Droit des Gens, Liv. IV. ch. 2, § 12.

Government having been made in consideration that the French Government relinquished its demand for a renewal of the old treaties, *then it seems clear, that, as our Government applied the merchants' property to buy off those old treaties, the sums so applied should be reimbursed.*"[1]

Chief Justice Marshall, who was one of the plenipotentiaries that attempted to secure payment from France, and afterward, as Secretary of State, countersigned the proclamation of President Adams first promulgating the Convention of 1800, has borne testimony similar to that of Mr. Pickering. In conversation with Mr. Preston, of South Carolina, he said, that, "having been connected with the events of that period, and conversant with the circumstances under which the claims arose, *he was, from his own knowledge, satisfied that there was the strongest obligation on the Government to compensate the sufferers by the French spoliations.*"[2]

Hon. B. Watkins Leigh, an ancient Senator from Virginia, relates that the same eminent authority said in his presence, "distinctly and positively, that *the United States ought to make payment of these claims.*" This declaration made a particular impression upon Mr. Leigh, because he had been unfavorable to the claims.

7. The obligation of the United States may be inferred also from *the declared justice* of the claims which had been renounced. On this point the authority is equally explicit.

Of course, in urging them upon France, earnestly and

[1] Letter to James H. Causten: Speech of Hon. John M. Clayton in the Senate of the United States, April 23 and 24, 1846, Appendix, No. 2: Congressional Globe, 29th Cong. 1st Sess., Appendix, pp. 863, 864.

[2] William C. Preston to James H. Causten, January 29, 1844: Mr. Clayton's Speech, Appendix, No. 3: Ibid., p. 864.

most assiduously, by successive plenipotentiaries, there was a plain adoption of them as just. But even after their abandonment they continued to be recognized as just.

Hon. Robert R. Livingston, plenipotentiary at Paris, in his correspondence shortly after the abandonment, shows his discontent. In a note to the Minister of Exterior Relations he speaks compendiously of "the payment for illegal captures, with damages and indemnities on one side, and the renewal of the Treaty of 1778 on the other, as of *equivalent value*." [1] And in a despatch, under date of January 13, 1802, he says he has "always considered the sacrifices we have made of an immense claim as *a dead loss*." [2] But this "dead loss" fell upon "individuals," and not upon the "nation."

Mr. Madison, as Secretary of State, in a despatch to Hon. Charles Pinckney, our minister at the court of Spain, under date of February 6, 1804, upholds the justice of the claims in significant words : —

> "The claims from which France was released were *admitted by France*, and the release was for *a valuable consideration* in a correspondent release of the United States from certain claims on them." [3]

Thus, according to official declaration, the claims of American citizens were "admitted by France," but they were released for *a valuable consideration* which first inured to the benefit of the Government of the United States. *Equitably, that valuable consideration must belong to the claimants.*

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 717.
[2] Ibid., p. 704.
[3] Ibid., p. 795.

Mr. Clay, as Secretary of State under John Quincy Adams, made a report, which had the sanction of the latter, where he fully affirms the justice of the claims: —

"The pretensions of the United States arose out of the spoliations, under color of French authority, in contravention to law and existing treaties. Those of France sprung from the Treaty of Alliance of the 6th February, 1778, the Treaty of Amity and Commerce of the same date, and the Convention of the 14th of November, 1788. Whatever obligations or indemnities from those sources either party had a right to demand were respectively waived and abandoned, *and the consideration which induced one party to renounce his pretensions was that of the renunciation by the other party of his pretensions.* What was the value of the obligations and indemnities so reciprocally renounced can only be matter of speculation."[1]

Mr. Clay concludes by declaring that the Senate, to which his report is addressed, was most competent to determine how far the appropriation of the indemnities due to American citizens was "a public use of private property, within the spirit of the Constitution, and whether equitable considerations do not require some compensation to be made to the claimants."

There is one other authority, of commanding character, not to be forgotten. It is Hon. Edward Livingston, jurist, statesman, and diplomatist, who, though not engaged in the negotiations, knew them as contemporary, and afterward, as Senator, made a report, accepted ever since as an authentic statement of the whole case, in which he says: —

"The Committee think it is sufficiently shown that the claim for indemnities was surrendered *as an equivalent* for

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 7.

the discharge of the United States from its heavy national obligations, and for the damages that were due for their preceding non-performance of them. If so, can there be a doubt, independent of the constitutional provision, that the sufferers are entitled to indemnity? Under that provision *is not this right converted into one that we are under the most solemn obligation to satisfy?* . . . . To lessen the public expenditure is a great legislative duty; to lessen it at the expense of justice, public faith, and constitutional right would be a crime. Conceiving that all these require that relief should be granted to the petitioners, they pray leave to bring in a bill for that purpose."[1]

This list of authorities may be closed with that of the Emperor Napoleon, who, at St. Helena, dictated to Gourgaud the following testimony: —

"The suppression of this article [2d of the Convention] at once put an end to the privileges which France had possessed by the Treaty of 1778, *and annulled the just claims which America might have made for injuries done in time of peace.* This was exactly what the First Consul had proposed to himself, in fixing these two points *as equiponderating each other.*"[2]

Thus the head of the French Government at the time of the Convention unites with the statesmen of our own country in attaching value to these claims.

To all this array of argument and authority the Committee see no answer. They follow its teaching, when they adopt the conclusion, in which so many previous committees have already joined, that these individual

[1] Report, February 22, 1830: Senate Documents, 21st Cong. 1st Sess., No. 68, pp. 14, 15.

[2] Gourgaud's Memoirs, Vol. II. p. 129.

claims were originally just, and that the Government of the United States, having appropriated them for a "national" purpose, was substituted for France as debtor.

OBJECTIONS.

ASSUMING the obligation of the United States, the question occurs, What sum should be applied by Congress to its liquidation? But before proceeding to this point, the Committee will glance at what is urged sometimes against this obligation, so far at least as they are aware of opposition.

Objections of a preliminary character have been already considered; but there are others belonging properly to this stage of the inquiry.

Curiously, the two main objections most often adduced answer each other flatly. It is sometimes insisted that the claims were invalid, by reason of the abnormal relations between France and the United States anterior to the Convention of 1800, pronounced to be a state of war; and then, again, it is sometimes insisted that these claims were provided for in the subsequent Convention of 1803 for the purchase of Louisiana. But, if the claims were really invalid, as has been argued, it is absurd to suppose that France would have provided for them; and if they were really provided for, it is equally absurd to suppose that they were invalid. The two objections might be dismissed as equally unreasonable; but, since they have been made to play a conspicuous part, especially in Presidential vetoes, the Committee will occupy a brief moment in considering them.

Other objections, founded on the later Convention of 1831, on the Act of Congress annulling the French treaties, on the early efforts of the United States to procure satisfaction from France, and on the alleged desperate character of the claims, will be considered in their order.

I.—WAR DID NOT EXIST BETWEEN THE UNITED STATES AND FRANCE.

THE anomalous relations between France and the United States anterior to the Convention of 1800 did not constitute a state of war so as to annul all pending claims. The contrary assertion is inconsistent with (1.) the facts of the case, (2.) the declarations of the two parties, and (3.) the nature of the Convention.

Before considering these several topics, it may be remarked, that, had there been a state of war, it would not follow that all prior rights otherwise valid were annulled, so at least as not to be revived at the close of the war. On one important occasion, the contrary has been held by our Government in its negotiations with Great Britain. The provision relative to the fisheries which appears in the Treaty of 1783 was not noticed in the Treaty of Ghent; and yet the United States did not hesitate to insist afterwards, that, though interrupted by the War of 1812, it remained in full force after the termination of the war. Doubtless, claims bearing the open cause of war, and failing to be recognized in the treaty of peace, are annulled; for the treaty is the settlement of pending controversies between the two powers. But the claims in question were not the open

cause even of the anomalous relations between the United States and France, and they did not fail to have such recognition in the convention terminating those relations as to exclude all idea that they were annulled by war, or any other antecedent facts. It is not necessary to consider the effect of war, for it is easy to establish that war did not exist.

1. The facts of the case are all inconsistent with war. There was no declaration of war on either side; and, still further, throughout the whole duration of the troubles the tribunals of each country were open to citizens of the other, as in times of peace; so that a citizen of the United States was not an "alien enemy" in the courts of France, nor a Frenchman an "alien enemy" in the courts of the United States. This fact, which was presented by Mr. Clayton in his masterly discussion of the question, is most suggestive, if not conclusive.

It is true that diplomatic and commercial intercourse was suspended, that the two powers armed, and that on both sides force was employed. But this painful condition of things, though naturally causing great anxiety, did not constitute war. One power may, in its own discretion, suspend diplomatic and commercial intercourse with another; it may assume all the harness of war, and even use force in retaliation, retortion, or reprisal; but all this falls short of war, *especially when public acts and declarations show that war was not intended.* Such conduct tends to war, and, if continued, naturally ends in war. But it is not of itself that terrible transformation by which one nation, with all its people, is converted into the enemy of another nation, with all its people, so that every citizen of the

one becomes the enemy of every citizen of the other, and all pending rights and contracts between them disappear, at least for a time.

If war be the extinguisher of claims, it is because, in theory, the claimant is supposed to have opportunity for reparation by seizing the property of the enemy, wherever he can find it on the high seas. But no reprisals against France were authorized by the United States; no war on private property was permitted; so that the only principle on which war is the extinguisher of claims fails to apply.

But not even an act of war constitutes war. The two parties determine if war exists. To their public acts and mutual declarations we repair for interpretation of their conduct.

2. On the part of the United States *the declarations are explicit* that war did not exist, although it seemed imminent. Congress was convened in May, 1797, to deliberate on the threatening aspect of affairs, and adopt measures of public defence, which were continued in 1798 and 1799; but in all this series of acts there is constant and sedulous negation of the state of war. The Act of May 28, 1798, after reciting that "armed vessels sailing under authority or pretence of authority from the Republic of France have committed depredations on the commerce of the United States, and have recently captured the vessels and property of citizens thereof on and near the coasts," proceeds to authorize the seizure of any such armed vessel; but nothing is said of war.[1] Another Act, bearing date the same day, authorizes a provisional army, "*in the event of a declaration of war* against the United States, or of

[1] Statutes at Large, Vol. I. p. 561.

actual invasion of their territory by a foreign power, or of imminent danger of such invasion discovered in the opinion of the President to exist, *before the next session of Congress.*" [1] The Act of June 13, 1798, to continue in force only till the end of the next session, and renewed February 9, 1799, for a limited term, suspended commercial relations between the two countries, under penalties of forfeiture; [2] but such acts, however menacing, are absolutely inconsistent with an existing state of war, which of itself, without any additional act, suspends all commercial relations between the belligerent parties. The Act of June 25, 1798, authorizes our merchant vessels to subdue and capture any French armed vessel *from which an assault or other hostility shall be first made.* [3] The Act of July 6, 1798, respecting alien enemies, begins with the words of limitation, "*Whenever there shall be a declared war* between the United States and any foreign nation." [4] The Act of July 7, 1798, declares the treaties no longer "legally obligatory"; [5] but if war existed, such an act would have been superfluous. The Act of July 16, 1798, authorizes augmentation of the army "for and during the continuance of *the existing differences* between the United States and the French Republic." [6] The Act of March 2, 1799, also authorizes augmentation of the army, "*in case war shall break out.*" [7] Another Act, passed the next day, provides that certain troops authorized by the Act shall not be raised, "*unless war shall break out* between the United States and some European prince, potentate, or state." [8] And as

[1] Statutes at Large, Vol. I. p. 558.
[2] Ibid., pp. 565, 613.
[3] Ibid., p. 572.
[4] Ibid., p. 577.
[5] Ibid., p. 578.
[6] Ibid., p. 604.
[7] Ibid., p. 725.
[8] Ibid., p. 750.

late as February 20, 1800, while our envoys were on the way to Paris, another Act was passed, providing that further enlistments should be suspended, "*unless*, in the recess of Congress, and during the continuance of *the existing differences* between the United States and the French Republic, *war shall break out* between the United States and the French Republic."[1] All these cumulative measures refer to war, not as actually existing, but only as a future possibility. Meanwhile there were "existing differences" only. Finally, on the 14th of May, 1800, four months before the signature of the Convention, and when the plenipotentiaries on each side were at a dead-lock, another Act was passed, authorizing the abandonment of the military preparations set on foot in contemplation of the contingency of war.[2] Such is a synopsis of testimony from Congressional legislation. And now, when it is considered that Congress alone, under the Constitution, has power to declare war, that it never made any declaration of war against France, and that throughout this whole period of trouble, in its whole series of acts, it expressly negatived the fact of war, is it not impossible to assert, that, according to the understanding of our Government, war actually existed? What Congress did, and what it failed to do, answer in the affirmative.

The declarations of the Executive are as explicit as the declarations of Congress. In the instructions to our plenipotentiaries, under date of October 22, 1799, the Secretary of State, after mentioning the spoliations of France, says: "This conduct of the French Republic would well have justified an immediate declaration of

[1] Statutes at Large, Vol. II. p. 7. [2] Ibid., p. 85.

war on the part of the United States; but, *desirous of maintaining peace*, and still willing to leave open the door of reconciliation with France, *the United States contented themselves with preparations for defence* and measures calculated to protect their commerce."[1] These plenipotentiaries declared to the French, under date of April 11, 1800, that the Acts of Congress, "*far from contemplating a coöperation with the enemies of the Republic*, did not even authorize reprisals upon her merchantmen, but were restricted solely to the giving of safety to their own, till a moment should arrive when their sufferings could be heard and redressed."[2] Again, in a despatch to our minister in England, under date of September 20, 1800, the Secretary of State, who was none other than John Marshall, says: "The aggressions sometimes of one and sometimes of another belligerent power have forced us *to contemplate and to prepare for war as a probable event*":[3] not as an actual event already arrived, but only as a probable event. In the face of such declarations, who can say that war existed?

On the part of France the declarations are equally explicit. It is true, that, on the 12th September, 1800, in conversation, the French plenipotentiaries let drop fitful words, to the effect, that, "if the question could be determined by an indifferent nation, such a tribunal would say that the present state of things was war on the side of America, and that no indemnities could be claimed."[4] But the context shows, that, to avoid the payment of these indemnities, they were driven to every possible subterfuge; and the whole suggestion is

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 561.
[2] Ibid., p. 583. [3] Ibid., p. 452. [4] Ibid., p. 633.

contrary to all the admissions of the French Government, both in the executive and legislative branches. Indeed, these very plenipotentiaries of France, in a formal communication to the American plenipotentiaries, under date of August 11, 1800, declared that "*the state of misunderstanding* which has existed for some time between France and the United States, by the act of some agents rather than by the will of the respective Governments, *has not been a state of war, at least on the side of France.*"[1] We have already seen that it was not on the side of the United States. Then again, under date of December 12, 1801, they contented themselves with characterizing the relations of the two powers at this period as "*almost hostile.*"[2] At an earlier day, Talleyrand, as Minister of Exterior Relations, had written, under date of August 28, 1798: "France has a double motive, as a nation and as a republic, not to expose to any hazard the present existence of the United States. Therefore it never thought of making war against them; . . . . *and every contrary supposition is an insult to common sense.*"[3] When the Convention, in its final form, was laid before the Legislative Assembly, one of the French plenipotentiaries charged with its vindication announced in a speech, November 26, 1801, that "it had terminated *the misunderstanding* between France and America," which, he said, had become such "that it was necessary the reconciliation should be hastened, if it was desired that it *should not become very difficult.*" A report was also made to the Legislative Assembly by M. Adet, formerly French minister to the United

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 616.
[2] Ibid., p. 559.
[3] Ibid., p. 649.

States, in which it is declared: "*There had not been any declaration of war.* Commissions granted by the President to attack the armed vessels of France are not to be regarded as a declaration of war. The will of the President does not suffice to put America in a state of war. In order to this a positive declaration of Congress is requisite. *None has ever existed.*" And these legislative documents, so positive in character, are introduced by the learned editor in words which fitly characterize the international relations to which they refer, when he says that "they will serve to make known the causes which *momentarily disturbed the harmony* of the two states."[1] True enough. Unhappily, the harmony of the two states was disturbed, but war did not exist.

3. The terms of the Convention, and the final conditions of ratification, also, exclude the idea of war. Although beginning with a declaration that "there shall be a firm, inviolable, and universal peace," borrowed, in precise words, from Mr. Jay's treaty with Great Britain, the Convention of 1800 did not purport to be a treaty of peace; nor, indeed, as first executed, did it pretend to settle the questions between the two powers, except by postponing them to "a convenient time." A war annulling claims could not be treated in this way. The American Senate admitted as much, when it limited the duration of the Convention to eight years, which, had war previously existed, would have turned the Convention into a truce. The First Consul confessed the same, when he added his far-reaching proviso, for which, of course, there would have been no occasion, if the claims of American citizens had been

[1] Portiez, Code Diplomatique, Tom. I. pp. 39–57.

annulled by war; and again he testified, in his words at St. Helena, where he speaks of this Convention as having "annulled the *just claims* which America might have made for *injuries done in time of peace.*"

Thus falls the objection, so often urged, founded on the alleged existence of war. Strange, that, while so utterly untenable, it should gain a single supporter! There is one remark which belongs to the close of this topic. Even if France had affirmed that war existed, yet the United States constantly denied it at the time, both by legislative and executive acts; so that our Government is obviously estopped against its recognition, even if it fails to feel the indecency of such an excuse for any further denial of justice.

II.—THESE CLAIMS NOT EMBRACED IN THE LOUISIANA CONVENTION.

THE objection that these claims were provided for in the Convention of 1803, for the purchase of Louisiana, is equally groundless. It is difficult to understand how such a pretext was ever made; but the history of this question shows the strange shifts of opposition, especially when without restraint from knowledge of the subject. The most superficial glance shows that the two Conventions related to two different classes of claims. Those abandoned in 1800 were on account of spoliations, and in the nature of "torts." Those protected in 1803 were "debts." When it is considered how steadfastly the French plenipotentiaries in 1800 opposed the recognition of the claim for "torts," and how the First Consul, by his positive proviso, required their renunciation, it is most unreasonable to assume

that in 1803 they were formally recognized. This assumption becomes still more unreasonable, when it is understood that only at a comparatively recent period was the idea first broached; that it is without support in the documentary history of the Convention, or in any contemporary opinion; that it escaped the attention of the Board of Commissioners appointed under the Convention, as it escaped the attention of successive Secretaries of State, and also of Congressional Committees, reporting on the subject, until thus tardily it was brought forward as a last resort of opposition.

The Convention of 1800, which sacrificed the claim for "torts," kept alive certain pending claims for "debts."

"ART. V. The *debts contracted* by one of the two nations with individuals of the other, or by the individuals of one with the individuals of the other, *shall be paid*, or the payment may be prosecuted, in the same manner as if there had been no misunderstanding between the two states. *But this clause shall not extend to indemnities claimed on account of captures or confiscation.*"[1]

It will be observed how carefully the claims for spoliation were excluded from the benefit of this provision, which is limited positively to "debts." Though apparently plain, the French Government found difficulties in its execution. Vexatious delays were interposed, and "debts" were treated little better than "claims," so that our minister at Paris, Hon. Robert R. Livingston, was constrained to address the French Government, under date of March 25, 1802: "The fifth article of the treaty says, expressly, they shall be paid;

[1] United States Statutes at Large, Vol. VIII. p. 180.

but justice and good faith say it, independent of the treaty. Yet they remain unsatisfied; nor is the most distant hope as yet afforded them of when or how they will be paid."[1] Such was the spirit of other correspondence. At last, by one and the same transaction, Louisiana was purchased, and these "debts" were provided for. The plenipotentiaries of the United States, Mr. Livingston and Mr. Monroe, — the latter for a second time plenipotentiary, — undertook to pay eighty millions of francs for the purchase, of which sixty millions were for France, and the remaining twenty millions for the payment of "debts" secured by the Convention of 1800; and these terms were embodied in a treaty and two associate conventions of the same date.

The treaty contained the terms of cession. One of the conventions regulated the terms of purchase, and the other provided that "*the debts* due by France to citizens of the United States, *contracted before the 30th September*, 1800, shall be paid" according to certain regulations. It will be observed that these words descriptive of the "debts" are not unlike those employed in the fifth article of the Convention of 30th September, 1800.

The new Convention regulating the payment of "debts" begins with a preamble, setting forth the desire of the President and of the First Consul, "*in compliance with the second and fifth articles* of the Convention of the 30th September, 1800, to secure the payment of the sum due by France to the citizens of the United States." From the association of these two articles some hastily infer a purpose to revive

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 714.

the "claims" abandoned in the famous second article. But such revival, instead of being "in compliance" with that article, or, according to the corresponding French words of the Convention, *en exécution* of that article, would be in direct contradiction of it. The allusion to the second article is obviously to carry into the Louisiana Convention the original exclusion of the spoliation "claims." If any doubt could arise on this allusion, taken by itself, it would disappear, when we consider that the fifth article is both *inclusive* and *exclusive*. It includes "debts contracted," which are to be paid, and it excludes "indemnities claimed on account of captures or confiscations," which are not to be paid. Thus the language of the preamble is justified, and the Convention is *in compliance* with both the second and fifth articles of the original Convention.

If we examine the Louisiana Convention carefully, we find that "debts" alone are provided for. The first article, as we have already seen, declares, "*the debts* due by France to citizens of the United States, contracted before the 30th September, 1800, shall be paid according to the following regulations." The second article describes "*the debts* provided for by the preceding article" as comprised in a conjectural note. The third article declares how "the said debts shall be discharged by the United States." The fourth article more specifically defines *the debts* as follows: "It is expressly agreed that the preceding articles shall comprehend *no debts* but such as are due to citizens of the United States who have been and are yet creditors of France, for *supplies*, for *embargoes*, and *prizes made at sea* in which the appeal has been properly

lodged within the time mentioned in the said Convention, 30th September, 1800." The fifth article explains further the prizes intended in the fourth article, as follows: "The preceding articles shall apply only, 1st, to captures of which the Council of Prizes shall have ordered restitution, it being well understood that the claimant cannot have recourse to the United States otherwise than he might have had to the Government of the French Republic, and only in case of insufficiency of the captors; 2d, *the debts* mentioned in the said fifth article of the Convention of 1800, the payment of which has been heretofore claimed of the actual Government of France, and for which the creditors have a right to the protection of the United States. The said fifth article does not comprehend prizes whose condemnation has been or shall be confirmed." Under the first head, the class of captures is here defined. It was those only where the Council of Prizes had ordered restitution, being captures not warranted by the laws of France. Such cases were included among "debts," because the decree of the Council of Prizes ordering restitution instantly created, on the part of the owner, a claim on the captor for the property or its value; and where the captor was "insufficient," the Government assumed the debt. *And this is the only class of captures provided for in the Louisiana Convention.* Under the second head are specified "*the debts* mentioned in the fifth article," with an express declaration that it "does not comprehend prizes whose condemnation has been or shall be confirmed." Thus in every article and at every stage the spoliation claims are excluded from the benefit of the Louisiana Convention.

Such was the contemporary conclusion of our minister at Paris, Mr. Livingston, who, in his letter to the French Government of April 17, 1802, said: "The fifth article expressly stipulates that *all debts* due by either Government to the individuals of the other shall be paid. But as this would also have included *the indemnities for captures and condemnations previously made*, and it was the intention of the contracting parties, by the second article, to *preclude* this payment, as depending on a future negotiation, *it was necessary to except from this promise of payment all that made the subject of the second article:* . . . . as to the payment of indemnities for embargoes in consequence of the cargoes being put in requisition, or with a view to any other political measure which carried with it nothing hostile to the United States, no controversy ever arose between the plenipotentiaries of the two nations." [1]

Surely this objection may be dismissed.

III.—THESE CLAIMS NOT EMBRACED IN THE CONVENTION OF 1831 WITH FRANCE.

ANOTHER objection has been started, kindred to the last, also in kindred ignorance. It is said that these claims were embraced in the later Convention of 1831 with France, under Louis Philippe. No mistake can be greater.

That Convention opens with these words: "The French Government, *in order to liberate itself completely from all the reclamations preferred against it by citizens of the United States* for unlawful seizures, captures, se-

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 717.

questrations, confiscations, or destructions of their vessels, cargoes, or other property, engages to pay a sum of twenty-five millions of francs to the Government of the United States, who shall distribute it *among those entitled*, in the manner and according to the rules which it shall determine."[1]

This provision must be interpreted in the light of preceding treaties, especially of that which had occupied so much attention. They are all *in pari materia*, and therefore, according to a familiar rule of jurisprudence, must be taken together. But the Convention of 1800, by the proviso of the First Consul at its ratification, *liberated France completely* from all liability for the claims now in question, so that they ceased to be valid against her. Therefore these claimants could not be "among those *entitled*" under the later Convention. This interpretation is confirmed by the judgment of the French Government, and also by the judgment of our own Commissioners under the Convention. Mr. Rives, our minister at Paris, writing to Mr. Van Buren, the Secretary of State at the time, under date of February 18, 1831, says: "From what I have been able to learn of ———'s report, it is favorable throughout to the principle of our claims. It excludes, however, the claims of American citizens in the nature of debt or of supplies, as being alien to the general scope of the controversy between the two Governments, — and also American claims of every description originating previous to the date of the Louisiana arrangement, in 1803, which has been invariably alleged by this Government to be in full satisfaction of all claims then existing."[2]

[1] United States Statutes at Large, Vol. VIII. p. 430.
[2] Executive Documents, 22d Cong. 2d Sess., H. of R., No. 147, p. 165.

Our own Commissioners, sitting at Washington, reported to the Secretary of State, under date of December 30, 1835, that they had required every person seeking *to entitle* himself under the Convention to show that his "claim remained unimpaired and in full force against France at the date of the Convention of 1831."[1] But the claims in question did not come within this category. Clearly, they were not "unimpaired and in full force against France."

All this is apparent on the face; but it was demonstrated by the action of the Commissioners. The experiment was made with regard to captures prior to the ratification of the Convention of 1800, and no less than one hundred and four cases were submitted to the board. All but four were rejected. The first rejections, in point of time, were January 11, 1833, in two different cases, when we have the following entries: "Caroline, captured February 10, 1798, — rejected, — *the vessel having been captured before the 30th September,* 1800"; "Brig Orlando, captured March 1, 1800, — rejected, — *the capture having been made anterior to the 30th September,* 1800."[2] The indemnities allowed by the Commissioners were mainly for captures under the decrees of Berlin, Milan, Rambouillet, and Trianon, — that succession of sweeping edicts by which Napoleon at the height of power enforced his Continental system. There were four awards for captures after the signature of the Convention of 1800, and before its ratification. As such cases, occurring during this intermediate period, were plainly saved from the renun-

[1] Executive Documents, 24th Cong. 1st Sess., H. of R., No. 117, p. 4.

[2] Report of Secretary of State, April 25, 1846: Senate Documents, 29th Cong. 1st Sess., No. 313.

ciation of the Convention of 1800,[1] and yet were not included in the Convention of 1803, they came naturally within the scope of the Convention of 1831. The claims in question had no such advantage. Renounced in 1800, they were not adopted in 1831. But, ceasing to be claims upon France, they have become claims upon the United States.

IV. — THESE CLAIMS NOT AFFECTED BY THE ACT OF CONGRESS ANNULLING THE FRENCH TREATIES.

THEN it is said that the French treaties were annulled by Act of Congress, so as to render the set-off and mutual release a mere form, and nothing else. This objection, also, proceeds in ignorance of the question.

It is true, the United States, by Act of Congress, July 7, 1798, declared the treaties heretofore concluded with France *no longer obligatory*.[2] But the question still remained as to the effect of this Act. Not purporting to be retrospective, all obligations under the treaties at that date were fixed, whether on the part of the United States or on the part of France. Therefore France, besides constant liability under the Law of Nations, was liable also under the treaties for all depredations anterior to this date, and the United States were liable for all non-performance of obligations anterior to this date. Assuming that the treaties were annulled, it is evident that the anterior claims of each were not in any way affected; so that there was still, even under the treaties, occasion for set-off and mutual release.

[1] Art. IV.

[2] Statutes at Large, Vol. I. p. 578.

The depredations upon our commerce were not merely in violation of ancient treaties, but also of the Law of Nations; so that, even if the treaties were annulled, yet the Law of Nations remained with its obligations and remedies. Our plenipotentiaries were instructed to obtain compensation for captures and condemnations contrary to the Law of Nations generally received in Europe, or to stipulations of treaty, so long as the latter "remained in force." As the treaties "remained in force" until July 7, 1798, we were unquestionably liable to France for indemnities to that day. Before that day the West India islands were lost. Before that day we excluded French privateers and their prizes from our ports. All proper damages for these things must have entered into the French account against us. Therefore the annulling Act of Congress could affect only the *quantum* of consideration on both sides at the set-off and mutual release, and not the fact of consideration.

But it is more than doubtful if the annulling Act could have the effect attributed to it. Can one of two parties render a contract void by mere declaration to that effect? Between two individuals this cannot be done. Could it be done between two nations? Mr. Jefferson thought not. At least, there is a report from him on another occasion completely covering this case. These are his words: "It is desirable in many instances to exchange mutual advantages by legislative acts rather than by treaty; because the former, though understood to be in consideration of each other, and therefore greatly respected, yet, when they become too inconvenient, can be dropped at the will of either party; *whereas stipulations by treaty are forever irrevo-*

cable but by joint consent, let a change of circumstances render them ever so burdensome."[1] Chief Justice Marshall quotes another opinion, where a treaty was declared to be not only the law of the land, but a law of a superior order, "because it not only repeals past laws, *but cannot itself be repealed by future ones.*"[2] Such authority would seem to settle this question, especially reinforced as it is by the Law of Nations; for it must not be forgotten that the obligation of treaties is determined by International Law rather than by Municipal Law.

Even supposing the Act of Congress had succeeded in annulling the treaties, its effect, as regards France, was not so much to discharge her claims as to make them perfect. In plain terms, it was a final determination on our part not to fulfil the treaties. The circumstances of the time, perhaps, rendered it necessary; but your Committee cannot fail to observe, that, according to all principles of justice and the established usage of nations, this very determination consummated the right of France to indemnities for non-observance of the treaties. On our part there was no longer any pretence to fulfil the treaties; so that this very Act of Congress, which is cited to excuse us, may be cited to condemn us.

Whatever the law of this case, even assuming, that, according to good opinions, the treaties were annulled on the 7th July, 1798, it is perfectly clear that at the negotiation of 1800 they were treated by France as obligatory. On these she founded her counter-claims.

[1] Report on the Tonnage Duty, January 18, 1791: Wait's State Papers, Vol. X. p. 73.

[2] Life of Washington, Vol. V., Appendix, Note II.

The present narrative shows her persistency. As often as our claims were urged, her counter-claims were pressed in reply. And why ask the renunciation of the treaties, if the Act of Congress had already annulled them? Why, further, offer a large sum of money for release from their obligations? Whatever the effect of the annulling Act in the judgment of the American plenipotentiaries, it is clear that they regarded the treaties as a cloud to be removed. And it is equally clear that the French plenipotentiaries to the last maintained the obligations of the treaties. The instructions of the First Consul, before entering upon his Italian campaign, were to make "the acknowledgment of former treaties the basis of negotiation and the condition of compensation."[1] It was the finality of these instructions which at the time caused the dead-lock already described. Thus, on the part of the United States, the obligation of the treaties was denied subsequently to July 7, 1798, while on the part of France it was affirmed as an indispensable condition down to the negotiation.

Therefore, on the part of the United States, there were claims under the treaties anterior to July 7, 1798, and also under the Law of Nations generally. On the part of France there were counter-claims under the treaties down to the negotiation. Each side was tenacious. Neither would yield. The time for compromise arrived. Then came the set-off and mutual release. The transaction was between two nations, but it was identical in character with transactions often occurring between two individuals.

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 609.

V. — EARLY PERSISTENCY TO SECURE INDEMNITIES FROM FRANCE NO GROUND OF EXEMPTION FROM PRESENT LIABILITY.

THE persistent efforts of our Government, anterior to the Convention of 1800, are sometimes brought forward as sufficient reason for present indifference. This also is a mistake.

It is true that our Government exerted itself much. Considering its comparative immaturity, it deserves credit for the courage and determination with which it labored. But it must not be forgotten that in all it did, even for the recovery of indemnities, it acted under the duties and instincts of national defence. Our commerce was despoiled, to the detriment of American citizens. But this grievance, which went on assuming larger proportions, proceeded directly from the *hostile spirit* of France, aroused by alleged infraction of national obligations on our part; so that behind the question of indemnities rose always the question of self-defence. France made reprisals because the United States refused compliance with solemn treaties, and, as is usual in such cases, individual citizens were the sufferers. Defending the interests of its citizens, the country itself was defended. To abandon these interests, especially without securing an abandonment of French pretensions, would have been an abandonment of the country, leaving it the dishonored victim of untold exactions without end. If this be correct, — and your Committee do not see how it can be controverted, — there can be no boast of extraordinary efforts, all of which, whatever form they assumed, were in the performance of a patriotic duty, simple as the

filial devotion of Cordelia, "according to her bond, nor more nor less."

And now the fidelity of that early day, when duty was done, is the apology for infidelity to-day, when duty is left undone; and those patriotic efforts are vouched as a title to present exemption. Because the Government was zealous for indemnities when France was responsible, *argal* it may be indifferent now, when the United States are substituted for France. Or has it come to this, — that it is right to be zealous in pressing a foreign Government, but not right to be zealous against ourselves, *when substituted for that foreign Government,* as in the present case? Beyond the misconception of public duty apparent in this pretence, it forgets the true state of the question. Here, again, we are brought to the Convention of 1800, when both claims and counter-claims were adjusted. If the claims on our side had been deliberately rejected, or if our Government had been compelled to withdraw, as in a case of nonsuit, the case might have been otherwise. There was no rejection, and no nonsuit, but, as has been so fully shown, a set-off and mutual release, by which each party accorded to its adversary just as much as it claimed for itself. So far as the two Governments were concerned, claims and counter-claims were extinguished, and neither could look to the other; but it did not follow that American citizens, whose "individual" claims had been appropriated to extinguish "national" obligations, were cut off from appeal to their own Government. On the contrary, the very zeal for these claimants, while they looked to France, is still due in their behalf, now that, by the action of their own Government, they must look to their country.

It is sometimes said in sarcasm that it is easy to be generous at the expense of another; but in this case, now that the responsibility has been transferred to our own country, it is not a question of generosity, but of debt. The property of these claimants is actually in the hands of our Government, like assets paid over and deposited "for whomsoever it may concern," — or, to use a more pungent illustration, like certain property to which there can be no valid title against the original owner. Stolen goods may be followed wherever found. But the vessels of these claimants were stolen by France, and at last are found in the hands of our own Government. Will the Government hold them against the real owners? For nearly ten years it denounced the conduct of France. How, then, can it profit by this conduct at the expense of its own citizens? If the receiver is as bad as the original offender, how can the Government expect to escape the indignant condemnation it fastened upon France? Least of all, how can any early persistency to recover this property excuse its detention now?

VI. — THESE CLAIMS NEVER DESPERATE, SO AS TO BE OF NO VALUE.

Kindred to the last objection is the assertion that the claims were intrinsically desperate, so as to be of no value, — an objection as humiliating as false.

It is humiliating, because it assumes that claims solemnly declared just, both by the executive and legislative branches, — the former by successive acts of diplomacy, and the latter by successive Acts of Congress, — were of "no value." If this were true,

then was our Government, when it sued these claims, guilty of national *barratry*, for which it would deserve to be thrown over the bar of nations. It was a stirrer of false suits. Such an imputation is an impeachment of the national character.

But it is false. The claims were never "desperate," except so far as they were doomed to meet the counter-claims of France. On the contrary, they were intrinsically just, and their justice was often admitted even by France, who advanced against them her own pretensions under the treaties. And when the set-off and mutual release occurred, their validity was solemnly recognized; nay, more, they were paid to the United States. Such is the inconsistency of objectors, insisting that claims thus recognized and paid were so far "desperate" as to be of "no value," when they were of sufficient value to form the sole consideration of release from immeasurable national obligations. If you would find a measure of value for the American claims, you must look to the counter-claims of France, not forgetting that all the vehemence with which these were sustained testifies unmistakably to our claims.

If we may judge from our national history, there is no reason to doubt that these claims, if not released by our Government, would have been fully satisfied by France afterwards. It is in the nature of claims on foreign powers to seem desperate. Such was the case, as is well remembered, with the claims on Denmark, on Spain, and on Naples; but all these have been paid. *No just claim by the American Government can be desperate.* What claims could seem more desperate than those under the arbitrary, wide-spreading edicts of Napoleon Bonaparte in his pride of place? But Presi-

dent Jackson, when Louis Philippe had become King, made an appeal, as he expressed it, "to the justice and magnanimity of regenerated France,"[1] and even these claims, accruing under a Government which had ceased to exist, were satisfied. The claims in question had as much intrinsic equity, and were more intimately associated with the national sentiments. Asserting that they would have been paid, the Committee are sustained not only by the reason of the case, but by the judgment of the disinterested historian of our country, who thus concludes his account of the Convention of 1800, and its final ratification with the proviso of the First Consul: —

"Had the treaty been ratified in its original shape, the sufferers by the spoliations of the French might, perhaps, before now, have obtained that indemnity from the French Government which they have ever since been asking of their own, but which has hitherto been unjustly withheld."[2]

There is no statute of limitations between nations; so that these claims would have been as valid against France in 1831 as they unquestionably were in 1800. A nation like the United States has only "to bide its time," and the day of justice will come. Indeed, President Jackson, when dwelling on the negotiations with France in 1831, bore testimony to the vitality of American claims on foreign powers, when he said that the new Convention would be "an encouragement for perseverance in the demands of justice, by this new proof, that, if steadily pursued, they will be listened to, and admonition will be offered to those powers, if any, which

[1] Message, December 7, 1830.
[2] Hildreth, History of the United States, Vol. V. p. 400.

may be inclined to evade them, *that they will never be abandoned.*"[1] These words of Andrew Jackson are a sufficient answer to the present objection.

ALL OBJECTIONS ANSWERED.

SUCH are the objections to the responsibility of the United States. The Committee believe that they have all been answered, so that the claims stand above impeachment or question, as a debt to be liquidated and paid. It only remains to consider what sum should be appropriated for this purpose.

JUST COMPENSATION.

THE "just compensation" to be paid by the United States may be regarded, according to the classical report of Mr. Livingston, in two lights: *first*, the value of the advantages to the United States at the expense of these claimants; and, *secondly*, the actual losses sustained by these claimants. Neither is proposed as an absolute measure. A glance at each will enable us to arrive, by approximation, at a proper result.

VALUE OF ADVANTAGES TO THE UNITED STATES.

IT is impossible to estimate in money the advantages to the United States. Beyond the great boon of assured peace, under which our commerce, no longer exposed to spoliation, put forth at once more than its original life, two specific objects were gained: *first*, exemption from all outstanding engagements and liabilities of every nature under the early treaties with

[1] Message, December 6, 1831.

France; and, *secondly,* the establishment of a new Convention, which, while rejecting much-debated claims and counter-claims, provided positive advantages to the United States, among which was that payment of "debts" subsequently assured by the Louisiana Convention.

If the United States could be held responsible to France for the treasure lavished on national independence, in pursuance of these original treaties, there would be an item of fourteen hundred and forty millions of francs, or about two hundred and eighty millions of dollars.[1] The brave lives sacrificed for us cannot be estimated in any account; but France did not forget them. Even amidst the congratulations at Morfontaine in honor of the Convention, the First Consul reminded the joyous company of the sacrifice. Beyond the toast he proposed in honor of those who fell in battle for the independence of the New World, there is no record of what was said by the successful general of France; but old Homer, in one of his most touching passages, had already spoken for him:—

> "Life is not to be bought with heaps of gold;
> Not all Apollo's Pythian treasures hold,
> Or Troy once held in peace and pride of sway,
> Can bribe the poor possession of a day.
> Lost herds and treasures we by arms regain,
> And steeds unrivalled on the dusty plain;
> But from our lips the vital spirit fled
> Returns no more to wake the silent dead."[2]

[1] Calonne, as cited by Mr. Clayton, Speech in the Senate on French Spoliations, April 23, 1846: Congressional Globe, 29th Cong. 1st Sess., Appendix, p. 856. A recent authority puts this item at 1,500,000,000 francs, or $300,000,000. — *Les Finances Françaises sous l'ancienne Monarchie, la République, le Consulat et l'Empire*, par M. le Baron de Nervo, Receveur-Général, (Paris, 1863,) Tom. II. p. 176.

[2] Iliad, tr. Pope, Book IX. 524–531.

Under the sod of America, and under the waves of the Atlantic, Frenchmen were sleeping whose lives had been given to the support of our cause. If France did not forget them, let it be spoken in her honor; but we cannot forget them, as we try to state the great account between our two countries. Their swords, if flung into the scales, whatever "heaps of gold" we might bring, would forever turn the balance against us.

But how estimate the value of release from the "guaranty" retrospectively and prospectively, as well for past failures as future liabilities? It was often urged that the guaranty bound the United States to the support of France only in the event of a defensive war, and that the war in which she had been engaged was not of this character. But it is more than doubtful if either proposition can be maintained. The guaranty on its face has no limitation. And even if it had such limitation, who will venture to say that the war in which France drove back her multitudinous assailants, reinforced by the navies of England, was not defensive? If France did not at once require the execution of the guaranty, it was none the less a vital obligation.

That our Government appreciated the embarrassments, if not the obligations, which the guaranty entailed, has already been shown by the Committee. But there are certain words that may be fitly quoted again. In the instructions of our Secretary of State to the first triumvirate of plenipotentiaries at Paris, under date of July 15, 1797, it is admitted that "our guaranty of the possessions of France in America will perpetually expose us to the risk and expense of war, or to disputes and questions concerning our national

faith." On this account the plenipotentiaries were instructed to obtain its release, and "on the part of the United States, instead of troops or ships of war, to stipulate for a moderate sum of money or quantity of provisions, at the option of France, ... not to exceed two hundred thousand dollars a year."[1] This was moderate; but it was a recognition of the guaranty, and of its practical value. The next triumvirate, at the negotiation of 1800, offered more. They proposed to buy out the guaranty by a payment of five millions of francs, or one million of dollars.[2] It is needless to say that both these offers were rejected.

It would be as difficult to measure in money the value of that guaranty, retrospectively and prospectively, as to measure in money our obligations to France in the assurance of national independence. The liabilities for failure prior to 1800, if pressed, would not have been inconsiderable. But had the guaranty continued so as to constrain the United States throughout the long war that followed, ending at Waterloo, what arithmetic can calculate the damage? Nay, more, — if, at the present moment, any such guaranty bound us to France, who would not feel that it was an obligation from which we must be released at any price?

Besides the obligations of "guaranty," were other engagements with regard to French armed ships in our ports which had proved most onerous. Here, also, was alleged failure on our part; and there was the prospect of infinite embarrassment, if not of open war, unless these obligations were cancelled. To keep them would cause collision with England; not to keep them

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, pp. 457, 458.
[2] Note to the French Plenipotentiaries, August 20, 1800: Ibid., p. 625.

would cause collision with France. Our plenipotentiaries offered, in the negotiation of 1800, three millions of francs for release from these obligations.[1] This moderate offer was rejected also.

France continued stubborn, insisting upon the ancient treaties, with all consequent indemnities. At last, by the propositions of the 4th of September, 1800, already exhibited by your Committee, a measure of value was affixed to our engagements and liabilities. France undertook to release us from all these on condition that we would pay the indemnities due to our citizens, thus treating claims and counter-claims as equivalent in value. It was required positively that "the indemnities which shall be due by France to the citizens of the United States *shall be paid for by the United States.*"[2] In consideration of release from the treaties, the United States were to assume the obligations of France to American claimants. How this proposition, rejected at first, eventually prevailed in the Convention and its successive amendments has been already explained. It is mentioned now only to show the value of these engagements and liabilities.

ACTUAL LOSSES TO CLAIMANTS.

THE practical question remains, as to the actual losses of the claimants. Here the evidence is precise and full.

Our own Government, when pressing these claims upon France, gave an official estimate of their value.

[1] Note to the French Plenipotentiaries, August 20, 1800: Senate Documents, 19th Cong. 1st Sess., No. 102, p. 625.

[2] Note from the French Plenipotentiaries: Ibid., p. 630.

On one occasion it put them above fifteen million dollars.[1] Afterward it put them at twenty million dollars. The latter estimate is found in a report from the Secretary of State to Congress, under date of January 18, 1799, where it speaks of "unjust and cruel depredations on American commerce, which have brought distress on multitudes and ruin on many of our citizens, and occasioned *a total loss of property to the United States of probably more than twenty millions of dollars.*"[2] Inquiry into the losses confirms this statement. From evidence presented to committees in former years, and now belonging to history, it has been estimated that there were *eight hundred and ninety-eight vessels* included in the claims released to France.[3]

The American vessels despoiled by France between 1792, the outbreak of the European war, and July 31, 1801, when the Convention of 1800, with its proviso, was ratified by Napoleon Bonaparte, have been reckoned at two thousand two hundred and ninety, embracing as follows: first, vessels captured by the French; secondly, vessels captured by the French and Spaniards conjointly; thirdly, vessels detained by embargo at Bordeaux. The following list shows how the account stands.

[1] Conference of American Plenipotentiaries with M. X., October 29, 1797: American State Papers, Foreign Relations, Vol. II. p. 163.

[2] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 430.

[3] Mr. Webster, in his careful speech of 12th January, 1835, says: "So far as can be learned from official reports, there are something more than six hundred vessels with their cargoes which are supposed to form claims under this bill." — *Works*, Vol. IV. p. 177.

List of Vessels in different Classes despoiled by France.[1]

Whole number		2,290
From which deduct as follows: —		
1. Vessels paid for by special decrees of France	14	
2. Vessels paid for under the Convention of 1803, viz.: —		
For embargoes	103	
For contracts	270	
For prize causes under order of restitution	6	
	379	
3. Vessels rejected under Convention of 1803, viz.: —		
For contracts or supplies	102	
For prize causes	26	
	128	
4. Vessels paid for by Spain under the Florida treaty of 1819	173	
5. Vessels rejected under Florida treaty	191	
6. Vessels paid for under Convention with France of July 4, 1831, being for captures between the signing and ratification of the Convention of 1800	4	
7. Vessels rejected for want of merit, neglect of claimants, loss of proof, and other contingencies, reckoned at	503	
		1,392
		898

Thus we are brought to the number of *eight hundred and ninety-eight vessels* bartered to France.

To arrive at the value of these vessels, the Committee have been led to look at the estimate of vessels under conventions with other powers for the payment of similar claims. Here is a list allowed by different powers, with the average of each vessel: —

[1] From a Review of the Veto Message of President Pierce, by James H. Causten, pp. 21, 22.

	Vessels.	Averages.
Great Britain	217	$ 47,672.81
Spain	40	8,136.49
France	357	10,504.20
Spain	320	15,625.00
Denmark	112	5,987.17
France	361	12,984.71
Naples	51	37,745.00
Spain	20	30,000.00
Mexico	64	31,658.43
Colombia	5	21,474.53
	1,547	$ 221,788.34

From this list it appears that Mexico has paid as high an average as $ 31,000 for each vessel; Naples, $ 37,000; and Great Britain, $ 47,000. The general average of the whole list is $ 19,000.

If the vessels despoiled by France were estimated according to the highest average, namely, that of vessels despoiled by Great Britain, the sum-total would swell to no less than $ 42,206,000; estimated according to the general average, the amount is $ 17,062,000.

But the valuation which has been deemed most satisfactory is that presented in the indemnity paid by Spain for the French spoliations on our commerce in her ports during this period, amounting, for 173 vessels, to $ 2,845,619, being an average of $ 16,500 for each vessel. Adopting this average, we have as the aggregate value of the 898 vessels yielded to France under the Convention of 1800, and lost to our merchants, the sum of $ 14,817,000, — nearly *fifteen million dollars.*

This estimate, tested by the official statements, fixing the spoliations in October, 1797, at fifteen millions, and in January, 1799, at twenty millions, will appear at least not excessive, — adding for the continued spolia-

tions during the succeeding two years and a half to July, 1801, only the very moderate allowance of two and one half millions, (being in the ratio of but one fourth the increase for the fifteen months between the two former dates,) and deducting payments. Here are the figures: —

Official estimate of January, 1799 .	$ 20,000,000	
Additional to July, 1801, say . .	2,500,000	
		$ 22,500,000
Deduct therefrom —		
1. Vessels paid for by France, fifty-two cases, at the average $ 16,500 . . .	$ 858,000	
2. Debts paid under Convention of 1803	3,750,000	
3. French spoliations, paid for under treaty with Spain of 1819	2,845,619	
		7,453,619
Sum-total, after deductions		$ 15,046,381

If to this estimate interest be added, even at the smallest rate, the losses of these sufferers will assume vastly larger proportions. More than sixty years have run their course since the United States, by a public act and for a valuable consideration, became their debtor. From the beginning the country has enjoyed without price all the "national" benefits originally secured at their expense, as part of the national capital with its bountiful income, while these claimants have been shut out from their property, and all its just profits. If interest be due on any national debt, it is difficult to see why it is not due here.

Never was a case stronger. Nor is there any doubt with regard to the rule. According to the best authorities, whether publicists or courts, interest is justly due.

Though swelling the national liability, it is none the less an item in the case.

It will be borne in mind that these claims are under the Law of Nations. As such, the rule of damages is under that law, and not Municipal Law. Therefore the Committee resort to the Law of Nations. Among all the authorities, none has spoken more fully and clearly than Rutherforth; nor is there any one whose words on this point are oftener cited. Here is the rule: —

"In estimating the damages which any one has sustained, where such things as he has a perfect right to are unjustly taken from him, or withholden, or intercepted, we are to consider not only the value of the thing itself, but the value likewise of the fruits or profits that might have arisen from it. He who is the owner of the thing is likewise the owner of such fruits or profits. So that it is as properly a damage to be deprived of them as it is to be deprived of the thing itself." [1]

Grotius says substantially the same.[2] So does Vattel, who declares that claimants may obtain "what is due, *together with interest and damages*." [3] And Wheaton copies Vattel.[4] The Supreme Court of the United States gives the same rule with nearly equal simplicity: —

"The prime cost, or value of the property lost at the time of the loss, and, in case of injury, the diminution in value by reason of the injury, *with interest upon such valuation*, affords the true measure for assessing damages." [5]

Such is the law of interest, and the Committee refer to it as illustrating the accumulated losses which await satisfaction at the hands of Congress.

[1] Institutes of Natural Law, Book I. ch. 17, § 5.
[2] De Jure Belli ac Pacis, Lib. II. cap. 17, § 4.
[3] Le Droit des Gens, Liv. II. ch. 18, § 342.
[4] Elements of International Law (ed. Lawrence), Part IV. ch. 1, § 3.
[5] The Amiable Nancy, 3 Wheaton, R., 560.

RECOMMENDATIONS OF THE COMMITTEE.

THE Committee, impressed by the original justice of these claims and the present obligation of the United States, do not hesitate to recommend their liquidation and payment at an early day, as they would recommend the discharge of a national debt. While setting forth the unanswerable evidence of their value, they content themselves with the recommendation made many years ago, and repeated by successive committees of both Houses of Congress, limiting the appropriation to a sum not exceeding five million dollars, without interest, to be distributed by a board of commissioners *pro rata* among the claimants, according to the provisions of the bill reported herewith. The limitation is a departure from strict justice, but it is part of the additional sacrifice which seems to be expected by Congress from these long-suffering claimants.

In deference to the Secretary of the Treasury,[1] who, when consulted thereupon, objected to the creation of a stock for this special purpose, as provided in former bills, it is proposed that the money be paid whenever Congress shall make an appropriation therefor.

By positive description the bill is made to cover claims for illegal captures and condemnations prior to July 31, 1801, the date of the final ratification of the Convention. But, by positive words of exclusion, it is provided that the bill shall not cover claims originally embraced in the Louisiana Convention of 1803, in the treaty with Spain of 22d February, 1819, or in the Convention with France of July 4, 1831; so that, in point

[1] Hon. S. P. Chase.

of fact, the bill is carefully limited to those original claims which, after postponement by the second article of the Convention of 1800, were, at its final ratification, definitely renounced by the United States, in consideration of equivalent renunciations from France.

CONCLUSION.

THE Committee have now finished the review which, in the discharge of public service, they were called to make. Approaching a much vexed question without prejudice, they have striven to consider it with candor, in the hope of ascertaining and exhibiting the requirements of duty. The conclusion they have adopted, in harmony with so many previous committees of both houses, and also with Congress itself, which has twice enacted a law for the satisfaction of these claims, is now submitted to the judgment of the Senate.

How the Committee have reached this conclusion is seen by a final glance at the field that has been traversed. Putting aside the three preliminary objections to these claims, — (1.) that they are ancient and stale, (2.) that they have passed into the hands of speculators, and (3.) that they should be postponed on account of the present condition of public affairs, — the Committee have considered in order four principal topics: *First*, the claims of American citizens on France, as they appear in the history of the times; *secondly*, the counter-claims of France, as they, too, appear in the history of the times; *thirdly*, how the "individual" claims of American citizens were sacrificed to procure release of the "national" claims of France by a proceeding in the nature of set-off and mutual release;

and, *fourthly*, how the United States, for a valuable consideration, assumed the obligations of France, so as to become completely responsible therefor. Not content with showing affirmatively the merits of the claimants, the Committee next examined all known objections to the asserted responsibility of the United States, establishing negatively: (1.) that the relations between France and the United States were at no time such as to constitute a state of war, invalidating the claims; (2.) that they were not embraced in the Convention for the purchase of Louisiana; (3.) that they were not embraced in the later Convention of 1831; (4.) that the alleged annulling of the French treaties by Act of Congress did not affect them; (5.) that the early efforts of our Government with France, for their satisfaction, furnish no ground of exemption from present liability; and (6.) that the claims, at the time of their abandonment, were not desperate, so as to be without value.

With the removal of all known objections, the way was open to consider the extent of "just compensation" under three different heads: (1.) the advantages secured to the United States by the sacrifice of these claimants; (2.) the actual losses of these claimants; and (3.) the final recommendations of the Committee.

Such is the whole case in its divisions and subdivisions. There is one reflection which belongs naturally to the close. These claims have survived several generations, entwining themselves each year with the national history. Meanwhile the Republic, for whose advantage they were sacrificed, has outgrown the puny condition of that early day, when its commerce was the prey of France, and even the sacred debt for independence was left unpaid. These claimants have been

called to remark the glorious transformation by which the weak has become strong and the poor has become rich; with glistening eye they have followed the flag of the country, as it was carried successfully in every sea; with sympathetic heart they have heard the name of the country sounded with honor in every land; and now they joyfully witness the unexampled resources with which it upholds the national cause against an unexampled rebellion; — but these claimants have been called to observe, especially, how, for many years, unchecked by hindrances, the National Government labored successfully with foreign powers to secure justice for despoiled citizens, until all nations — Great Britain, Spain, Denmark, Naples, Holland, Mexico, Colombia, Peru, and Chile — have yielded to persistent negotiation, and even France has paid indemnities to our citizens for spoliations subsequent to these very claims. All this history these claimants have observed with pride; but how can they forbear to exclaim at the sacrifice required of them, — that they alone, the pioneers of our commercial flag, are compelled "in suing long to bide," while part of the debt for national independence is cast upon their shoulders, and the whole country enjoys priceless benefits at their expense? Well may these disappointed suitors, hurt by unfeeling indifference to their extensive losses, and worn with endless delay, cry out in bitterness of heart, "Give us back our ships!" But this cannot be done. It only remains that Congress should pay for them.

APPENDIX.

LIST OF REPORTS OF COMMITTEES.

Number.	Where reported.	By whom reported.	Committee.	Date.	Bills and reports.	Detailed reports.
1	House	Mr. Giles[1]	Select	April 22, 1802	. . . . .	R.
2	House	Mr. Marion	Select	Feb. 18, 1807	Favorable	R.
3	Senate	Mr. Roberts	Claims	Mar. 3, 1818	Adverse	R. 124
4	House	Mr. Russell	Foreign Affairs	Jan. 31, 1822	Adverse	R. 32
5	House	Mr. Forsyth	Foreign Affairs	Mar. 25, 1824	Adverse	R. 94
6	Senate	Mr. Holmes	Select	Feb. 8, 1827	Favorable	R. 48
7	House	Mr. E. Everett	Foreign Affairs	May 21, 1828	Favorable	R. 264
8	Senate	Mr. Chambers	Select	May 24, 1828	Favorable	R. 206
9	Senate	Mr. Chambers	Select	Feb. 11, 1829	Favorable, bill	R. 76
10	House	Mr. E. Everett	Foreign Affairs	Feb. 16, 1829	Favorable	R. 82
11	Senate	Mr. E. Livingston	Select	Feb. 22, 1830	Favorable, bill	R. 68
12	Senate	Mr. E. Livingston	Select	Dec. 21, 1830	Favorable, bill	R. 32
13	Senate	Mr. Wilkins	Select	Jan. 26, 1832	Favorable, bill	
14	Senate	Mr. Chambers	Select	Dec. 20, 1832	Favorable, bill	
15	Senate	Mr. Webster[2]	Select	Dec. 10, 1834	Favorable, bill	
16	House	Mr. E. Everett Mr. Cambreleng	Foreign Affairs	Feb. 21, 1835	Favorable Adverse	R. 121
17	House	Mr. Howard	Foreign Affairs	Jan. 20, 1838	Favorable, bill	R. 445
18	House	Mr. Cushing	Individual	Mar. 31, 1838	Favorable	
19	House	Mr. Cushing Mr. Pickens	Foreign Affairs	April 4, 1840	Favorable, bill Minority Adv's	R. 343
20	House	Mr. Cushing	Foreign Affairs	Dec. 29, 1841	Favorable, bill	R. 16
21	Senate	Mr. Choate	Foreign Relat's	Jan. 28, 1842	Favorable, bill	
22	Senate	Mr. Archer	Foreign Relat's	Jan. 5, 1843	Favorable, bill	
23	House	Mr. C. J. Ingersoll	Foreign Affairs	April 17, 1844	Favorable, bill	
24	Senate	Mr. Choate	Foreign Relat's	May 29, 1844	Favorable, bill	
25	Senate	Mr. Choate	Foreign Relat's	Dec. 23, 1844	Favorable, bill	
26	Senate	Mr. J.M. Clayton[3]	Select	Feb. 2, 1846	Favorable, bill	
27	House	Mr. Tru. Smith[4]	Foreign Affairs	July 13, 1846	Favorable, bill	
28	Senate	Mr. Morehead	Select	Feb. 10, 1847	Favorable, bill	R. 144
29	House	Mr. Tru. Smith	Foreign Affairs	Jan. 4, 1848	Favorable, bill	
30	Senate	Mr. Tru. Smith[5] Mr. Hunter	Select	Feb. 5, 1850	Favorable, bill Minority Adv's	R. 44
31	House	Mr. Buel	Foreign Affairs	June 14, 1850	Favorable, bill	R. 355
32	Senate	Mr. Bradbury Mr. Felch	Select	Jan. 14, 1852	Favorable, bill Minority Adv's	R. 26
33	Senate	Mr. Hamlin[6]	Select	Jan. 17, 1854	Favorable, bill	
34	House	Mr. Bayly[7]	Foreign Affairs	Jan. 4, 1854	Favorable, bill	
35	House	Mr. Pennington	Foreign Affairs	Mar. 3, 1857	Favorable, bill	
36	Senate	Mr. Crittenden[8]	Select	Feb. 4, 1858	Favorable, bill	R. 53
37	House	Mr. Clingman	Foreign Affairs	May 5, 1858	Favorable, bill	
38	House	Mr. Royce	Foreign Affairs	Mar. 29, 1860	Favorable, bill	R. 259
39	Senate	Mr. Crittenden	Select	June 11, 1860	Favorable, bill	
40	Senate	Mr. Sumner	Foreign Relat's	Jan. 13, 1862	Favorable, bill	
41	Senate	Mr. Sumner	Foreign Relat's	Jan. 20, 1863	Favorable, bill	

1 Favorable statement of facts, without coming to any conclusion.

2 This bill was voted by the Senate, February 3, 1835, yeas 25, nays 20.

3 This bill was voted by the Senate June 8, 1846, yeas 27, nays 23.

4 This bill (being Mr. Clayton's bill as voted by the Senate) was voted by the House, August 4, 1846, yeas 94, nays 87. It thus passed both houses, but was vetoed by President Polk as a Senate bill; and on the veto the Senate voted yeas 27, nays 15,—not two thirds.

5 This bill was voted by the Senate, January 24, 1851, without a division.

6 This bill was voted by the Senate, Feb. 15, 1854, yeas 27, nays 15.

7 This bill was voted by the House, January 27, 1855, yeas 111, nays 77, and by the Senate, February 6th, yeas 28, nays 17, but was vetoed by President Pierce as a House bill; and the House vote on the veto was yeas 113, nays 86,—not two thirds,—so the bill was lost.

8 This bill was voted by the Senate, January 10, 1859, yeas 26, nays 20.

NO PROPERTY IN MAN:

UNIVERSAL EMANCIPATION WITHOUT COMPENSATION.

SPEECH IN THE SENATE, ON THE CONSTITUTIONAL AMENDMENT ABOLISHING SLAVERY THROUGHOUT THE UNITED STATES, APRIL 8, 1864.

The property in horses was the gift of God to man at the creation of the world; the property in slaves is property held and acquired by crime, differing in no moral aspect from the pillage of a freebooter, and to which no lapse of time can give a prescriptive right. — JOHN QUINCY ADAMS, *Speech at Bridgewater*, November 6, 1844.

> Swift with her wand she issued and unclosed
> The loathsome sties wherein the swine reposed.
> . . . . .
> They men became, but younger than before,
> More beauteous far, and far majestic more.
>
> *Odyssey*, tr. SOTHEBY, Book X. 398 – 407.

The Christian religion is equal in its operation, and is accommodated to every nation on the globe. It robs no one of his freedom, violates none of his inherent rights, on the ground that he is a slave by nature, as pretended; and it well becomes your Majesty to banish so monstrous an oppression from your kingdoms in the beginning of your reign, that the Almighty may make it long and glorious. — Las Casas, *Address before Charles V.: Prescott's History of the Conquest of Mexico*, Vol. I. p. 379, Note.

In a clause of his will Cortés expresses a doubt whether it is right to exact personal service from the natives, and commands that a strict inquiry shall be made into the nature and value of such services as he had received, and that in all cases a fair compensation shall be allowed for them. Lastly, he makes this remarkable declaration: "It has long been a question, whether one can conscientiously hold property in Indian slaves. Since this point has not yet been determined, I enjoin it on my son Martin and his heirs that they spare no pains to come to an exact knowledge of the truth, as a matter which deeply concerns the conscience of each of them, no less than mine." — Cortés, *his Testament:* Ibid., Vol. III. p. 345.

Mais certes, s'il y a rien de clair et d'apparent en la nature, et en quoy il ne soit pas permis de faire l'aveugle, c'est cela que nature, le ministre de Dieu et la gouvernante des hommes, nous a tous faits de mesme forme, et, comme il semble, à mesme moule, afin de nous entrecognoistre tous pour compaignons, ou plus tost freres. — La Boëtie, *De la Servitude Volontaire:* Œuvres, ed. Feugère, (Paris, 1846,) p. 26.

Quand est-ce donc un homme de Dieu goûtera le plaisir de la liberté dans toute son étendue? Quand il ne la goûtera que dans ses frères affranchis. — Bossuet, *Panégyrique de Saint Pierre Nolasque*, Point II.

Et qu'on ne dise pas, qu'en supprimant l'esclavage, le Gouvernement violeroit la propriété des colons. Comment l'usage, ou même une loi positive, pourroit-elle jamais donner à un homme un véritable droit de propriété sur le travail, sur la liberté, sur l'être entier d'un autre homme innocent, et qui n'y a point consenti? En déclarant les nègres libres, *on n'ôteroit pas au colon sa propriété;* on l'empêcheroit de faire un crime, et l'argent qu'on a payé pour un crime n'a jamais donné le droit de le commettre. — Condorcet, *Note* 109 *sur les Pensées de Pascal.*

Allegiance to that Power that gives us the *forms* of men commands us to maintain the *rights* of men; and never yet was this truth dismissed from the human heart, — never in any time, in any age, — never in any clime

where rude man ever had any social feeling, or where corrupt refinement had subdued all feelings; never was this one unextinguishable truth destroyed from the heart of man, placed as it is in the core and centre of it by his Maker, that man was not made the property of man. — Richard Brinsley Sheridan, *Speech on the Trial of Warren Hastings*, June 6, 1788: *Moore's Memoirs of Sheridan* (London, 1825), Vol. I. p. 505.

In each of these cases [the United States and Russia] the slaves and the serfs are not ripe for freedom; no enslaved people ever are; and to wait, before you bestow liberty or political rights, till the recipients are fit to employ them aright, is to resolve not to go into the water till you can swim. You must make up your mind to encounter many very considerable evils at first, and for some time, while men are learning to use the advantages conferred on them. — Archbishop Whately, *Annotations to Bacon's Essays:* Essay XXI., *Of Delays.*

Non-seulement ma liberté est à moi, par la seule grâce de Dieu, comme ma vie, et personne n'en peut disposer à ma place, mais je ne suis pas maître d'en disposer moi-même. Ce n'est pas assez de dire, que la liberté est un droit: la liberté est un devoir. — Jules Simon, *La Liberté*, Tom. I. p. 26.

THE first public movement for an Amendment of the National Constitution, abolishing Slavery, was a resolution presented by the devoted Abolitionist, Henry C. Wright, and adopted by the American Antislavery Society at its anniversary meeting in Philadelphia, December 4, 1863. In a letter to Mr. Sumner, January 13, 1870, Mr. Wright recounted the history of this resolution, which he set forth, prefixing the original in the handwriting of Mr. Sumner: —

"That the voice of the people is heard through petitions to Congress, and this Convention earnestly recommend that this voice be raised in petitions for an Amendment of the Constitution, declaring that Slavery shall be forever prohibited within the limits of the United States.

"CHARLES SUMNER.

"ON BOARD OF STEAMBOAT EMPIRE STATE."

Mr. Wright adds: —

"This is in your hand. On the back, in my hand, are the words: 'Saloon of Steamer Empire State, on Long Island Sound, Wednesday, A. M., December 2, 1863. Adopted by the American Antislavery Society, at its thirtieth anniversary or third decade meeting, held in Philadelphia, December 3d and 4th, 1863. Adopted December 4th, Friday. Presented by Henry C. Wright, of Boston, and adopted by the Society without a dissenting voice.'

"HENRY C. WRIGHT."

Mr. Wright afterwards communicated these facts to the press.

December 14, 1863, in the House of Representatives, Mr. Ashley, of Ohio, introduced a Constitutional Amendment abolishing Slavery, in these terms: —

"Slavery is hereby forever prohibited in all the States of the Union, and in all Territories now owned or which may hereafter be acquired by the United States."

On the same day, Mr. Wilson, of Iowa, introduced another, in these terms: —

"Slavery, being incompatible with a free Government, is forever prohibited in the United States, and involuntary servitude shall be permitted only as a punishment for crime."

January 11, 1864, in the Senate, Mr. Henderson, of Missouri, proposed the following amendment: —

"Slavery or involuntary servitude, except as a punishment for crime, shall not exist in the United States."

This was referred to the Committee on the Judiciary.

February 8th, while the Committee had the question still under consideration, Mr. Sumner proposed an Amendment as follows: —

"ARTICLE —. Everywhere within the limits of the United States, and of each State or Territory thereof, all persons are equal before the law, so that no person can hold another as a slave."

Mr. Sumner moved the reference of the joint resolution containing his Amendment to the Select Committee on Slavery and Freedmen, of which he was Chairman. Mr. Trumbull thought it had better go to the Committee on the Judiciary, to which the other proposition had been referred. Mr. Sumner remarked, that already petitions against the Fugitive Slave Act had been reported from the Committee on the Judiciary with the recommendation that they be referred to the other Committee, that the terms of the resolution raising this Committee were broad enough to cover every proposition relating to Slavery, and that, in fact, petitions relating to a Constitutional Amendment had already been referred to this Committee. If after this statement the Senator desired that the joint resolution should be referred to the Committee of which he was the honored head, Mr. Sumner consented with the greatest pleasure. Mr. Trumbull expressed the opinion that "the appropriate Committee for all propositions to change the Constitution was the Judiciary Committee," and in this opinion Mr. Doolittle concurred. Mr. Sumner was perfectly willing to follow the suggestion made. His chief desire was that the Committee would "act upon it soon."

Meanwhile Mr. Saulsbury, of Delaware, moved that the joint resolution be indefinitely postponed, which was lost, — Yeas 8, Nays 31. It was then referred to the Committee on the Judiciary.

February 10th, Mr. Trumbull reported back the two joint resolutions, and the various petitions on the subject, with a substitute, as an amendment to the joint resolution of Mr. Henderson, in the following terms: —

"SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation."

February 17th, Mr. Sumner, inferring from the report of the Committee a disposition to follow the Ordinance for the Northwest Terri-

tory, and also thinking it desirable to expel from the Constitution clauses alleged to concern Slavery, gave notice of the following substitute, the first clause of which is modelled precisely on the famous prohibition in the Ordinance.

"ARTICLE 13.

"SECTION 1. There shall be neither slavery nor involuntary servitude anywhere in the United States, or within the jurisdiction thereof, otherwise than in the punishment of crimes whereof the party shall have been duly convicted; and the Congress may make all laws which shall be necessary and proper to enforce this prohibition.

"SECTION 2. In the third paragraph of the second section of the first article, concerning the apportionment of Representatives, the following words shall be struck out, so as to be no longer a part of the Constitution, namely: 'Which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons,' except the words 'excluding Indians not taxed,' which shall be allowed to remain, so that the whole clause shall read: 'Representatives and direct taxes shall be apportioned among the several States which may be included within this Union according to their respective numbers, excluding Indians not taxed.'

"SECTION 3. The whole of the third paragraph of the second section of the fourth article, in the words hereto appended, shall be struck out, so as to be no longer a part of the Constitution, namely: 'No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.'"

March 28th, the Senate, as in Committee of the Whole, proceeded to consider the joint resolution, the pending question being the substitute of the Committee. Mr. Trumbull opened the debate by an elaborate speech, in which he said: "If we are to get rid of the institution of Slavery, we must have some more efficient way of doing it than by the Proclamations that have been issued or the Acts of Congress which have been passed. . . . . Sir, in my judgment, the only effectual way of ridding the country of Slavery, and so that it cannot be resuscitated, is by an Amendment of the Constitution, forever prohibiting it within the jurisdiction of the United States. It is reasonable to suppose, that, if this proposed Amendment passes Congress, it will within a year receive the ratification of the requisite number of States to make it a part of the Constitution. That accomplished, and we are forever freed of this troublesome question. . . . . We take this question entirely away from the politics of the country; we relieve Congress of sec-

tional strifes; and, what is better than all, we restore to a whole race that freedom which is theirs by the gift of God, but which we for generations have wickedly denied them." Mr. Wilson, of Massachusetts, made an effective speech, whose character appears in its title, as published: "The Death of Slavery is the Life of the Nation." Then followed, on successive days, speeches from Mr. Davis, of Kentucky, Mr. Saulsbury, of Delaware, Mr. McDougall, of California, Mr. Hendricks, of Indiana, and Mr. Powell, of Kentucky, all against the Amendment. Mr. Davis declared that "the most operative single cause of the pending war was the intermeddling of Massachusetts with the institution of Slavery," and it was an "objection of overruling weight, that no revision of the Constitution, in any form, ought to be undertaken under the auspices of the party in power." Mr. Saulsbury said: "Immediately after the Flood, the Almighty condemned a whole race to servitude. He said, 'Cursed be Canaan!'" In behalf of the Amendment were able speeches by Mr. Clark, of New Hampshire, Mr. Howe, of Wisconsin, Mr. Reverdy Johnson, of Maryland, Mr. Harlan, of Iowa, Mr. Hale, of New Hampshire, and Mr. Henderson, of Missouri.

April 8th, the last day of debate, Mr. Sumner made the speech which follows this Introduction.

During the discussion there were several votes. Mr. Davis moved as a substitute, "No negro, or person whose mother or grandmother is or was a negro, shall be a citizen of the United States, or be eligible to any civil or military office or to any place of trust or profit under the United States." This was lost, — Yeas 5, Nays 32. Mr. Davis then proposed to add to the first section of the proposed article: "But no slave shall be entitled to his or her freedom under this Amendment, if resident, at the time it takes effect, in any State the laws of which forbid free negroes to reside therein, until removed from such State by the Government of the United States." This was rejected without a division. Mr. Davis further proposed to add at the end of the second section, that, "when this Amendment of the Constitution shall have taken effect by freeing the slaves, Congress shall provide for the distribution and settlement of all the population of African descent in the United States among the several States and Territories in proportion to the white population of each State and Territory." This also was rejected without a division, as was another Amendment by him concerning the election of President and Vice-President. Mr. Powell moved to add to the first section: "No slave shall be emancipated by this article, unless the owner thereof shall be first paid the value of the slave or slaves so emancipated." This was rejected, — Yeas 2, Nays 34.

Mr. Sumner offered his substitute in these terms: —

"All persons are equal before the law, so that no person can hold another as a slave; and the Congress may make all laws necessary and proper to carry this article into effect everywhere within the United States and the jurisdiction thereof."

Concerning the Amendment of the Committee he remarked: —

"It starts with the idea of reproducing the Jeffersonian Ordinance. I doubt the expediency of reproducing that Ordinance. It performed an excellent work in its day, but there are words in it which are entirely inapplicable to our time. They are the limitation, 'otherwise than in the punishment of crimes whereof the party shall have been duly convicted.' Now, unless I err, there is an implication from those words that men may be enslaved as a punishment of crimes whereof they shall have been duly convicted. There was a reason for that at the time; for I understand that it was the habit in certain parts of the country to doom persons as slaves for life as a punishment for crime, and it was not proposed to prohibit this habit. But Slavery in our day is something distinct, perfectly well known, requiring no words of distinction outside of itself. Why, therefore, add the words, 'nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted'? To my mind they are entirely surplusage. They do no good there, but absolutely introduce a doubt.

"In placing a new and important text in our Constitution we cannot be too careful. We should consider well that the language adopted in this Chamber to-day will in all probability be adopted in the other House, and it must be adopted, also, by three fourths of the Legislatures of the States. Therefore we have every motive, the strongest inducement in the world, to make that language as perfect as possible. I do not hesitate to say, that I object to the Jeffersonian Ordinance, even if presented here in its original text. But now I am brought to the point that the proposition of the Committee is not the Jeffersonian Ordinance, except in its bad feature. In other respects, it discards the language of the Jeffersonian Ordinance, and also its collocation of words."

Mr. Trumbull replied, that the Committee, upon discussion and examination, had come to their conclusion. "I do not know," he said, "that I should have adopted these precise words, but a majority of the Committee thought they were the best words; they accomplish the object; and I cannot see why the Senator from Massachusetts should be so pertinacious about particular words." He hoped Mr. Sumner would withdraw his proposition.

Mr. Howard, of Michigan, wished as much as Mr. Sumner to use significant language that cannot be mistaken or misunderstood; but he preferred to dismiss all reference to French constitutions or French

codes, and "go back to the good old Anglo-Saxon language employed by our fathers in the Ordinance of 1787, an expression which has been adjudicated upon repeatedly, which is perfectly well understood both by the public and by judicial tribunals."

Mr. Sumner withdrew his proposition, which he called a "suggestion" only, and also "a sincere effort to contribute as much as he could to improve the proposition in form," but could not resist the appeal of his friend, the Chairman of the Committee. He forbore to press any amendment.

Mr. Sumner often regretted that he had not insisted upon a vote on striking out the clause giving implied sanction to slavery or involuntary servitude as "a punishment for crime."

April 8th, on the passage of the joint resolution, the vote stood, Yeas 38, Nays 6, when the Vice-President announced that the joint resolution, having received the concurrence of two thirds of the Senators present, was passed.

May 31st, the joint resolution was taken up in the House of Representatives. Mr. Holman, of Indiana, objected to its second reading, and the Speaker stated the question, "Shall the joint resolution be rejected?" On this question the vote stood, Yeas 55, Nays 76; and the joint resolution was not rejected. An excited debate occupied several days.

June 15th, the vote was taken, and it stood, Yeas 95, Nays 66, not voting 21. So the joint resolution failed, two thirds not voting in its favor. Mr. Ashley, of Ohio, a most strenuous supporter of the Constitutional Amendment, changed his vote from the affirmative to the negative, so as to move a reconsideration, which motion he made in the evening, and it was duly entered on the Journal, thus holding the joint resolution in suspense. The session of Congress closed without further action.

At the next session the President in his Annual Message reminded Congress of the pending Constitutional Amendment, and recommended its "reconsideration and passage," adding, that by the recent election the will of the majority was "most clearly declared in favor of such Constitutional Amendment." January 6, 1865, on motion of Mr. Ashley, the House of Representatives took up his motion to reconsider the vote of rejection. The debate, which was opened by him in an earnest speech, proceeded, with some interruptions, until January 31st, when he called the previous question on the motion. Mr. Stiles, of Pennsylvania, moved to lay the motion to reconsider on the table, which was lost, — Yeas 57, Nays 111. The previous question was then ordered. On the motion to reconsider, the vote stood, Yeas 112, Nays 57, not

voting 13; but, a majority being sufficient for this purpose, the motion to reconsider was agreed to. The question then recurred on the passage of the joint resolution, when, on motion of Mr. Ashley, the previous question was ordered. Before this was done, he stated that to hasten a vote he had declined speaking. Mr. Brown, of Wisconsin, asked him to yield, so that he might "offer a substitute for the joint resolution." Mr. Ashley could not yield; he had a substitute himself, which he should much prefer to the original joint resolution, but he did not offer it. On its final passage the vote stood, Yeas 119, Nays 56, not voting 8. So the two thirds required by the Constitution having voted in its favor, the joint resolution was passed.

All possible preparation had been made for the vote, and the attendance was unusually large, both of Representatives and spectators. The people throughout the country awaited the result with profound interest. The announcement by the Speaker was received with an outburst of enthusiasm in the Chamber. The Republican Representatives sprang to their feet and applauded with cheers and clapping of hands. The spectators in the crowded galleries followed the example, and for several minutes the Chamber was a scene of joy and congratulation. Mr. Ingersoll, of Illinois, then said, "In honor of this immortal and sublime event, I move that the House do now adjourn"; and the House adjourned.

The joint resolution submitting the Constitutional Amendment bears date February 1, 1865. It now remained that the Amendment should be ratified by the Legislatures of three fourths of the several States, there being at the time thirty-six. A certificate, announcing that this had been done, was issued by the Secretary of State, December 18, 1865, and from this date the Amendment became part of the Constitution. President Lincoln, who had watched this event with absorbing interest, did not live to witness the final result.

Mr. Sumner saw so clearly the delay incident to a Constitutional Amendment, and even the uncertainty with regard to its passage by Congress and adoption by the States, that, while supporting it cordially, he did not relax meanwhile his efforts for Congressional legislation against Slavery. Even if Congress could not be induced, in the exercise of its powers, to decree the death of the public enemy, he hoped that at least it would not hesitate to use all other powers to limit and weaken it, so that, should the Constitutional Amendment fail, or be postponed, Slavery would be in a condition from which it could not recover. His main postulate, that Slavery was contrary to Nature, and an outlaw, was important in sustaining action against it, whether by Constitutional Amendment or Congressional legislation. In the

course of debate on another question, Mr. Sherman spoke incidentally of the Constitutional Amendment as "the main proposition," when Mr. Sumner at once remarked: —

"The main proposition, Sir, is to strike Slavery wherever you can hit it; and I tell the Senator he will not accomplish his purpose, if he contents himself merely with a Constitutional Amendment. I am for a Constitutional Amendment; I have made the proposition in several forms: but how long will it take to carry that Amendment through both Houses of Congress, and then carry it to its final consummation in the votes of the Legislatures of three fourths of the several States, according to the requirements of the Constitution? Are we to postpone action on all these questions until that possibly distant day? No, Sir!" [1]

The speech which follows was published originally under the title, "Universal Emancipation without Compensation." In the edition of the Loyal Publication Society of New York the title was "No Property in Man." These two titles present fundamental principles of special significance at that time. They were in the nature of answer to the clamor for compensation.

[1] Congressional Globe, 38th Cong. 1st Sess., p. 1178, March 18, 1864. See, also, p. 1180.

SPEECH.

MR. PRESIDENT, — If an angel from the skies or a stranger from another planet were permitted to visit this earth and to examine its surface, who can doubt that his eyes would rest with astonishment upon the outstretched extent and exhaustless resources of this republic, young in years, but already rooted beyond any dynasty in history? In proportion as he considered and understood all that enters into and constitutes the national life, his astonishment would increase, for he would find a numerous people, powerful beyond precedent, without king or noble, but with the schoolmaster instead. And yet the astonishment he confessed, as all these things unrolled before him, would swell into marvel, as he learned that in this republic, arresting his admiration, where is neither king nor noble, but the schoolmaster instead, there are four million human beings in abject bondage, degraded to be chattels, under the pretence of property in man, driven by the lash like beasts, despoiled of all rights, even the right to knowledge and the sacred right of family, so that the relation of husband and wife is impossible and no parent can claim his own child, while all are condemned to brutish ignorance. Startled by what he beheld, the stranger would naturally inquire by what

authority, under what sanction, and through what terms of law or constitution, this fearful inconsistency, so shocking to human nature itself, continues to be upheld. His growing wonder would know no bound, when he was pointed to the Constitution of the United States, as final guardian and conservator of this peculiar and many-headed wickedness.

"And is it true," the stranger would exclaim, "that, in laying the foundations of this republic dedicated to human rights, all these wrongs were positively established?" He would ask to see that Constitution, and to know the fatal words by which the sacrifice was commanded. The trembling with which he began its perusal would be succeeded by joy as he finished; for he would find nothing in that golden text, not a single sentence, phrase, or word even, to serve as origin, authority, or apology for the outrage. And then his wonder, already knowing no bound, would break forth anew, as he exclaimed, "Shameful and irrational as is Slavery, it is not more shameful or irrational than the unsupported interpretation which makes your Constitution final guardian and conservator of this terrible and unpardonable apostasy."

Such a stranger, coming from afar, with eyes that no local bias had distorted, and with understanding no local custom had disturbed, would naturally see the Constitution in its precise text, and would interpret it in its true sense, without prepossession or prejudice. Of course he would know, what all jurisprudence teaches and all reason confirms, that human rights cannot be taken away by any indirection, or by any vain imagining of something intended, but not said, and, as a natural consequence, that Slavery exists, if exist it can

at all, only by virtue of *positive text*, and that what is true of Slavery is true also of all its incidents; and the enlightened stranger would insist, that, in every interpretation of the Constitution, that cardinal principle must never for a moment be out of mind, but must be kept ever forward as guide and master, that *Slavery cannot stand on inference*, nor can any support of Slavery stand on inference. Thus informed, and in the light of pervasive principle, —

"How far that little candle throws his beams!" —

he would peruse the Constitution from beginning to end, from its opening Preamble to its final Amendment, and then the joyful opinion would be given.

There are three things he must observe: first and foremost, that the dismal words "Slave" and "Slavery" do not appear in the Constitution; so that, if the unnatural pretension of property in man lurk anywhere in that text, it is under a feigned name, or an *alias*, which is cause of suspicion, while an imperative rule renders its recognition impossible. Next, he would consider the Preamble, which is the key to open the whole succeeding instrument; but here no single word is found which does not open the Constitution to Freedom and close it to Slavery. The object of the Constitution is announced to be "in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of *liberty* to ourselves and our posterity"; all of which, in every particular, is absolutely inconsistent with Slavery. And, thirdly, he would observe those time-honored, most efficacious, chain-breaking words in the Amendments: "*No person*

shall be deprived of life, *liberty,* or property, *without due process of law.*" Scorning all false interpretations and glosses fastened upon the Constitution in support of Slavery, and with these three things before him, he would naturally declare that there was nothing in the original text on which this appalling wrong could be founded anywhere within the sphere of its operation. With wonder he would ask again by what strange delusion or hallucination the reason had been so far overcome as to recognize Slavery in the Constitution, when plainly it is not there, and cannot be there. The answer is humiliating, but easy.

People find in texts of Scripture the support of their own religious opinions or prejudices; and, in the same way, they find in texts of the Constitution the support of their political opinions or prejudices. And this may not be in either case because Scripture or Constitution, when truly interpreted, supports such opinions or prejudices, but because people are apt to find in texts simply a reflection of themselves. Most clearly and indubitably, whoever finds support of Slavery in the National Constitution has first found such support in himself: not that he will hesitate, perhaps, to condemn Slavery in words of approved gentleness, but because, from unhappy education, or more unhappy insensibility to the wrong, he has already conceded to it a certain traditional foothold of immunity, which he straightway transfers from himself to the Constitution. In dealing with this subject, it is not the Constitution, so much as human nature itself, which is at fault. Let the people change, and the Constitution will change also; for the Constitution is but the shadow, while the people are the substance.

Thank God, under influence of the struggle for national life, and in obedience to its incessant exigencies, the people have changed, and in nothing so much as on Slavery. Old opinions and prejudices have dissolved, and that traditional foothold Slavery once possessed is gradually weakening, until now it scarcely exists. Naturally this change must sooner or later show itself in the interpretation of the Constitution. But it is already visible even there, in the concession of powers over Slavery formerly denied. The time, then, has come when the Constitution, so long interpreted for Slavery, may be interpreted for Freedom. This is one stage of triumph. Universal emancipation, which is at hand, can be won only by complete emancipation of the Constitution itself, which has been so long degraded to wear chains that its real character is scarcely known.

Sometimes the concession is made on the ground of *military necessity.* The capacious war powers of the Constitution are invoked, and it is said that in their legitimate exercise Slavery may be destroyed. There is much in this concession, — more even than is imagined by many from whom it proceeds. It is war, say they, which puts these powers in motion; but they forget, that, wherever Slavery exists, there is perpetual war, — that Slavery itself is a *state of war* between two races, where one is for the moment victor, — pictured accurately by Jefferson as "permitting one half the citizens to trample on the rights of the other, transforming those into despots and these into enemies."[1] Therefore, wherever Slavery exists, even in seeming peace, the war powers may be invoked to terminate a condition which is in-

[1] Notes on Virginia, Query XVIII.: Writings, Vol. VIII. p. 403.

ternecine, and to overthrow pretensions hostile to every attribute of the Almighty.

It is not on military necessity alone that the concession is made. Many, as they read the Constitution now, see its powers over Slavery more clearly than before. The old superstition is abandoned; and they join with Patrick Henry, when, in the Virginia Convention, he declared the power of manumission accorded to Congress. He did not hesitate to argue against the adoption of the Constitution, because it accorded this power. And shall we be less perspicacious for Freedom than this Virginia statesman for Slavery? Discerning the power, he confessed his dismay: let us confess our joy.

We have already seen that Slavery finds no support in the Constitution. Glance now at positive provisions by which it is brought completely under control of Congress.

1. First among the powers of Congress, and associated with the power to lay and collect taxes, is that to "provide for the common defence and general welfare." It is questioned whether this is a substantive power, or simply incident to that with which it is associated. But it is difficult, if not absurd, to insist that Congress has not this substantive power. Shall it not provide for the common defence? Shall it not regard the general welfare? If powerless to do these things in a great crisis, it had better abdicate. In the Virginia Convention, Mr. George Mason, a most decided opponent of the Constitution, said: "That Congress should have power to provide for the general welfare of the Union *I grant.*" [1] The language of Patrick Henry, to which allusion has just been made, was more explicit. He foresaw that

[1] Elliot's Debates (2d edit.), Vol. III. p. 442.

this power would be directed against Slavery, and did not hesitate to declare: —

"Slavery is detested. We feel its fatal effects. We deplore it with all the pity of humanity. Let all these considerations, at some future period, press with full force on the minds of Congress; let that urbanity which, I trust, will distinguish America, and the necessity of national defence, — let all these things operate on their minds; they will search that paper [the Constitution] and see if they have power of manumission. And have they not, Sir? Have they not power *to provide for the general defence and welfare?* May they not think that these call for the abolition of slavery? May they not pronounce all slaves free? And will they not be warranted by that power? This is no ambiguous implication or logical deduction. *The paper speaks to the point. They have the power in clear, unequivocal terms, and will clearly and certainly exercise it.*"[1]

Language could not be more positive. To all who ask for the power of Congress over Slavery, here is a sufficient answer; and remember that this is not my speech, but the speech of Patrick Henry, who says that the Constitution "speaks to the point."

2. Next comes the fountain, "Congress shall have power to declare war, to raise and support armies, to provide and maintain a navy." A power like this is from its nature unlimited. In raising and supporting an army, in providing and maintaining a navy, Congress is not restricted to any particular class or color. It may call upon all, and authorize that *contract* which the Government makes with an enlisted soldier. But such contract would be in itself an act of manumission;

[1] Elliot's Debates (2d edit.), Vol. III. p. 590.

for a slave cannot make a contract. And if the contract be followed by actual service, who can deny its completest efficacy in enfranchising the soldier-slave and his whole family? Shakespeare, immortal teacher, gives expression to an instinctive sentiment, when he makes Henry the Fifth, on the eve of the victory at Agincourt, encourage his men by promising, —

> "For he to-day that sheds his blood with me
> Shall be my brother; be he ne'er so vile,
> This day shall gentle his condition."

3. There is still another clause: "The United States shall guaranty to every State in this Union *a republican form of government.*" Here again is a plain duty. But the question recurs, What is a republican form of government? John Adams, in the correspondence of his old age, says: —

"The customary meanings of the words *republic* and *commonwealth* have been infinite. They have been applied to every government under heaven, — that of Turkey and that of Spain, as well as that of Athens and of Rome, of Geneva and San Marino." [1]

But the guaranty of a republican form of government must have a meaning congenial with the purposes of the Constitution. If a government like that of Turkey, or even that of Venice, could come within the scope of this guaranty, it would be of little value; it would be words, and nothing more. Evidently, it must be construed so as to uphold the Constitution, according to all the promises of its Preamble; and Mr. Madison has left a record, first published to the Senate by the distinguished Senator from Vermont [Mr. COLLAMER],

[1] Works, Vol. X. pp. 377, 378.

of the Committee on the Library, showing that it was originally suggested in part by the fear of Slavery,[1] so that in construing it we must not forget the disturbing influence. The Preamble and the record are important, disclosing the real intention. But no American need be at loss to designate some of the distinctive elements of a republic, according to the idea of American institutions. These are found, first, in the Declaration of Independence, by which it is solemnly announced "that all men are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness." And they are found, secondly, in that other guaranty and prohibition of the Constitution, in harmony with the Declaration: "*No person* shall be deprived of life, *liberty*, or property, *without due process of law*." Such are essential elements of "a republican form of government," which cannot be disowned without disowning the very muniments of our liberties; and these the United States are bound to guaranty. But all these, when set in motion, make Slavery impossible. It is idle to say that this result was not anticipated. It would be, then, only another illustration that our fathers "builded better than they knew."

4. Independent of the guaranty, there is the other clause just quoted, in itself a source of power: "*No person* shall be deprived of life, *liberty*, or property, *without due process of law*." This was part of the Constitutional Amendments proposed by the First Congress, un-

[1] Notes on the Confederacy, April, 1787: Madison's Letters and other Writings, Vol. I. p. 322. Congressional Globe, 37th Cong. 2d Sess., p. 1808, April 24, 1862.

der the popular demand for a Bill of Rights. Though brief, it is a whole Bill of Rights. Liberty can be lost only by "due process of law," — words borrowed from the ancient liberty-loving Common Law, illustrated by our master in law, Lord Coke, but best explained by the late Mr. Justice Bronson, of New York, in a judicial opinion: —

"The meaning of the section, then, seems to be, that *no member of the State shall be disfranchised, or deprived of any of his rights or privileges*, unless the matter shall be adjudged against him upon trial had according to the course of the Common Law. . . . . The words 'due process of law,' in this place, cannot mean less than a prosecution or suit instituted and conducted according to the prescribed forms and solemnities for ascertaining guilt or determining the title to property." [1]

Such is the protection thrown by the Constitution over every "person," without distinction of race or color, class or condition. There can be no doubt about the universality of the protection. All, without exception, come within its scope. The natural meaning is plain; but there is an incident of history which makes it plainer still, excluding all possibility of misconception. A clause of this character was originally recommended as an Amendment by two Slave States, Virginia and North Carolina, and by a slave-trading State, Rhode Island; but it was restricted by them to *freemen*, thus: "No *freeman* ought to be deprived of his life, *liberty*, or property, but by *the law of the land*." [2] When the recommendation came before Congress, the word "person"

[1] Taylor *v.* Porter, 4 Hill, R., 146, 147.

[2] Elliot's Debates (2d edit.), Vols. I. p. 334, III. p. 658, IV. p. 243.

was substituted for "freeman," and the more searching phrase "due process of law" was substituted for "the law of the land." In making this change, rejecting the recommendation of slave-owning and slave-trading States, the authors of this Amendment revealed their purpose, that *no person* wearing the human form should be deprived of *liberty* without due process of law; and the proposition was adopted by the votes of Congress, and then of the States, as part of the Constitution. Clearly, on its face, it is an express guaranty of personal liberty, and an express prohibition of its invasion anywhere.

In the face of this guaranty and prohibition, — for it is both, — how can any "person" be held as slave? Sometimes it is argued that this provision must be restricted to places within the exclusive jurisdiction of the National Government. Such formerly was my own impression, often avowed in this Chamber; but I never doubted its complete efficacy to render Slavery unconstitutional in all such places, so that "no person" could be held as a slave at the national capital or in any national territory. Constitutionally, Slavery has always been an outlaw, wherever that provision of the Constitution was applicable. Nobody doubted that it was binding on the national courts; and yet it was left unexecuted, a dead letter, killed by the predominant influence of Slavery, until at last Congress was obliged by legislative act to do what the courts failed to do, and to terminate Slavery in the national capital and national territories.

In this transcendent guaranty and prohibition there are no words of exclusive jurisdiction. All is broad and general as the Constitution itself; and since this

provision is in support of human rights, it cannot be restricted by any interpretation. There is no limitation in it, and nobody can supply any such limitation, without encountering the venerable maxim of law, *Impius et crudelis qui Libertati non favet,* — "Impious and cruel is he who does not favor Liberty." Long enough have courts and Congress merited this condemnation. The time has come when they should merit it no longer. The Constitution should become a living letter under the predominant influence of Freedom. This conviction has brought petitioners to Congress, during the present session, asking that the Constitution shall be simply executed against Slavery, and not altered. Ah, Sir, it would be a glad sight to see that Constitution, which we have all sworn to support, interpreted generously, nobly, gloriously for Freedom, so that everywhere within its influence the chains should drop from the slave! If it be said that this was not anticipated at its adoption, I remind you of Patrick Henry, when, at the time, he said, "The paper speaks to the point." No doubt, it does speak to the point, especially with the Amendments immediately thereafter adopted. Cicero preferred to err with Plato rather than to think right with other men. And pardon me, if, when my country is in peril from Slavery, and human rights are to be rescued, I prefer to err with Patrick Henry, in assuming power for Freedom, rather than to think right with Senators who hesitate in such a cause.

Mr. President, thus stands the case. There is nothing in the Constitution on which Slavery can rest, or find any the least support. Even on the face of that instrument it is an *outlaw;* but if we look further

into its provisions, we find at least four distinct sources of power, which, if executed, must render Slavery impossible, while the Preamble makes them all vital for Freedom: first, the power to provide for the common defence and general welfare; secondly, the power to raise armies and maintain navies; thirdly, the power to guaranty a republican form of government; and, fourthly, the power to secure *Liberty* against all restraint without due process of law. But all these provisions are something more than powers; *they are duties also.* And yet we are constantly and painfully reminded that pending measures against Slavery are unconstitutional. Sir, this is an immense mistake. *Nothing against Slavery can be unconstitutional.* It is hesitation that is unconstitutional.

And yet Slavery still exists, in defiance of all these requirements; nay, more, in defiance of reason and justice, which can never be disobeyed with impunity, it exists, the perpetual spoiler of human rights and disturber of the public peace, degrading master as well as slave, corrupting society, weakening government, impoverishing the very soil itself, and impairing the natural resources of the country. Such an outrage, so offensive in every respect, not only to the Constitution, but also to the whole system of order by which the universe is governed, can be nothing but *a national nuisance,* which, for the general welfare, and in the name of justice, ought to be abated. But at this moment, when it menaces the national life, it is not enough to treat Slavery merely as a nuisance, for it is much more. It is a public enemy and traitor, wherever it shows itself, to be subdued, in the discharge of solemn guaranties of Government, and in the exercise of unquestionable and

indefeasible rights of self-defence. All now admit that in the Rebel States it is *a public enemy and traitor,* so that the Rebellion is seen in Slavery, and Slavery is seen in the Rebellion. But Slavery throughout the country, everywhere within the national limits, is a living Unit, one and indivisible, — and thus even outside the Rebel States it is the same public enemy and traitor, lending succor to the Rebellion, and holding out "blue lights" to encourage and direct its operations. But whether national nuisance or public enemy and traitor, it is obnoxious to the same judgment, and must be abolished.

If, in abolishing Slavery, injury were done to the just interests of any human being, or to rights of any kind, there might be something to "give us pause," even against these irresistible requirements. But nothing of the kind can ensue. No just interests and no rights can suffer. It is the rare felicity of such an act, as well outside as inside the Rebel States, that, while striking a blow at the Rebellion, and assuring future tranquillity, so that the Republic shall be no longer a house divided against itself, it will add at once to the value of the whole fee simple wherever Slavery exists, will secure individual rights, and will advance civilization itself.

There is another motive at this time. Embattled armies stand face to face, one side fighting for Slavery. The gauntlet that has been flung down we have taken up in part only. Abolishing Slavery entirely, we take up the gauntlet entirely. Then can we look with confidence to Almighty God for His blessing upon our arms. "Till America comes into this measure," said John Jay during the Revolution, "her prayers to Heaven for Liberty will be impious."[1] So long as we sustain Slavery,

[1] Letter to Egbert Benson, 1780: Life, by his Son, Vol. I. pp. 229, 230.

so long as we hesitate to strike at Slavery, the heavy battalions of our armies will fail. Sir Giles Overreach, attempting to draw his sword, found it "glued to the scabbard with wronged orphans' tears." God forbid that our soldiers shall find their swords "glued" with the tears of the slave!

One question, and only one, rises in our path, — and this simply because the national representatives have been so long drugged and drenched with Slavery, which they have taken in all forms, whether of dose or douche, that, like a long-suffering patient, they are still sunk under its influence. I refer, of course, to the talk of compensation, under the shameful assumption that there can be property in man. Sir, there was a moment when I was willing to pay for Emancipation largely, or at least to any reasonable amount; but it was *as ransom*, and never as compensation. Thank God, that time has passed, never to return, — and simply because money is no longer needed for the purpose. Our fathers, under Washington, never paid the Algerines for our enslaved fellow-citizens, except as ransom; and they ceased all such tribute, when emancipation could be had without it. Such must be our rule. Any other would impoverish the Treasury for nothing. The time has come for the old tocsin to sound, "Millions for defence, not a cent for tribute!" Ay, Sir; millions of dollars — with millions of strong arms also — for defence against Slave-Masters; but not a cent for tribute to Slave-Masters.

If money is paid as compensation, clearly it cannot be awarded to the master, who for generations robbed the slave of his toil and all its fruits, so that, in justice, he may be treated as trustee of accumulated earnings with interest never paid over. Any money as compensation

must belong, every dollar, to the slave. If the case were audited in Heaven's chancery, there must be another allowance for prolonged denial of inestimable rights. Loss of wages may be estimated; but where is the tariff or price-current by which to determine those greater losses which have been the lot of every slave? Mortal arithmetic is impotent to assess the fearful sum-total. In presence of this infinite responsibility, the whole question must be referred to that other tribunal where master and slave are equal, while Infinite Wisdom tempers justice with mercy. There is a Persian tradition of Mahomet once saying that the greatest mortification at the Day of Judgment will be when the pious slave is carried to Paradise and the wicked master condemned to Hell.[1] It is only with finite powers that we on earth can imitate Divine Justice.

The theory of compensation is founded on the intolerable assumption of property in man, an idea which often intrudes into these debates, sometimes from open vindicators, and sometimes from others, who, while yielding, yet reluctantly yield, and thus their conduct is "sicklied o'er" with Slavery. Sir, parliamentary law must be observed; but, if in a parliamentary assembly indignant hisses are ever justifiable, they ought to break forth at every mention of this thing, whatever form it takes, — whether of arrogant claim, or mildest suggestion, or equivocal hint. Impious toward God, and infidel toward man, it is disowned by conscience and reason alike; nor is there any softness of argument or of phrase by which its essential wickedness can be disguised. "The fool hath said in his heart there is no God"; but it is kindred folly to say there is no Man.

[1] Saadi: The Gulistan, tr. Gladwin, Chap. VII., Tale 16.

The first is Atheism, and the second is like unto the first. If in this world a man owns anything, it is himself. This is his great patrimony, alike from his earthly father and his Father in Heaven. It is indefeasible and perpetual, — not to be sold, not to be bought. Always owning himself, he cannot be owned by another.[1]

No man can make black white or wrong right; nor can any Congress or any multitude overcome the everlasting law of justice.

According to a well-known and capital principle of jurisprudence, stolen property cannot be sold, and the attempt to sell it, knowing the primary abstraction, is a crime. The form of sale is impotent, and the title does not pass. Wherever he finds his property, the original owner may resume it as his own. The pawnbroker who has received it in pledge must release his hold; the purchaser who has paid the price must give it up. But can a stolen man be sold? Is there any form of sale which is not impotent to complete this great transfer, so as to give it the semblance of validity against the original owner? Can the title pass? Infinitely absurd and unnatural is the pretext that a man may reclaim his stolen coat wherever he finds it, but cannot reclaim himself! Is the coat more than the man? Slavery asserts that it is; and the whole country says the same, when it sanctions the return of a fugitive slave. But this pretension is only a further outgrowth of that appalling tyranny which begins by denying the right of a man to himself.

The Christian Church, by beautiful, glorious example,

[1] The famous device of Paracelsus was a mediæval verse, *Alterius non sit qui suus esse potest*, — meaning that no man who can be his own should be another's; which is good as far as it goes, but it does not disclose the whole truth.

testifies from earliest days against this pretension. Hermes, Prefect of Rome, converted to Christ, comes to church on Easter with twelve hundred and fifty slaves, whom after baptism he sets free. Chromatius, another Prefect of Rome, under Diocletian, also a convert, gives liberty after baptism to fourteen hundred, while he proclaims, "They who begin to be children of God must not be slaves of men." St. Germain, the admirable Bishop of Paris, on receiving alms, cries out, "Thanks be to God, we can now ransom a slave!" This list might be extended. Better even than such personal testimony is the same sentiment manifest in social institutions. St. Theodore, illustrious in the Eastern Church, imposed this rule upon its monasteries: "You must never employ slaves, neither in personal service, nor in affairs of the convent, nor in culture of the earth; *the slave is a man created in the image of God.*" The Church of the West was not less earnest. St. Benedict of Aniane, the second of the name in canonization, would not allow convents to be served by a slave. In the bosom of these retreats, as also in the priesthood, the former slave mingled with the former lord, nor was there any obstacle between him and the bishop's crosier. Onesimus, once the slave of Philemon, and hailed as brother beloved by Paul, is said to have become bishop of Ephesus.[1]

In the testimony of the Christian Church there is one character of precious example: I refer to Pope Gregory, justly meriting by his life the title of Great, which has been preserved by history. Through him England first tasted the blessings of Christianity. Fair-haired

[1] Cochin, L'Abolition de l'Esclavage, Tom. II., 2me Partie, Liv. X. ch. 2, 3.

Saxons from the distant island, standing for sale in the market of Rome, enlisted his sympathy. When told that they were Angles, he exclaimed, "Not Angles, but Angels," — "*Non Angli, sed Angeli*," — and he insisted on their ransom and instruction to become the apostles of their countrymen. Under his auspices St. Augustin commenced the work, so that the conversion of England may be traced to the sympathies aroused by English slaves on the banks of the Tiber. A letter from St. Gregory shows the spirit in which he acted. Giving freedom to two bondmen, he wrote these commanding words: "Since our Redeemer, Maker of the whole creation, being hereto propitiated, has been pleased to assume human flesh, that, by the grace of his divinity, the chain of slavery wherewith we were held captive being broken, he might restore us to pristine liberty, it is well that men whom Nature from the beginning has brought forth free and the law of nations has subjected to the yoke of servitude, should by benefit of manumission be restored to the liberty wherein they were born."[1] And do not these words speak to us now?

Foremost of all in history who have vindicated human liberty, and associated their names with it forevermore, stands John Milton, Secretary of Oliver Cromwell, and author of "Paradise Lost." Cradled under a lawless royalty, he helped to found and support the English Commonwealth, while in all that he wrote he pleaded for human rights, — now in defence of the English people, who had beheaded their king, and now in immortal poems which show how wisely and well he loved the cause he had made his own. Nowhere has the assump-

[1] S. Gregorii Registrum Epistolarum, Lib. VI. Ep. 12: Opera Omnia, (Edit. Benedict., Parisiis, 1705,) Tom. II. col. 800.

tion of property in man been encountered more completely than in the conversation between the Archangel and Adam, after the former had pictured a hunter whose game was "men, not beasts": —

> "O execrable son, so to aspire
> Above his brethren, to himself assuming
> Authority usurped, from God not given!
> He gave us only over beast, fish, fowl
> Dominion absolute; that right we hold
> By His donation; but man over men
> He made not lord, such title to Himself
> Reserving, human left from human free."[1]

Every assertor of this property puts himself in the very place of the hunter of "men, not beasts," described as "execrable son, so to aspire." The language is not too strong. "Execrable" is the assumption, — "execrable" wherever made: "execrable" on the plantation, "execrable" in this Chamber, "execrable" in every form it takes, "execrable" in all its consequences, especially "execrable" as an apology for hesitation against Slavery. The assumption, wherever it shows itself, must be beaten down under our feet, like Satan himself, in whom it has its origin.

Again, we are brought by learned Senators to the Constitution, which requires that there shall be "just compensation," where "private property" is taken for public use. But, plainly, here the requirement is absolutely inapplicable, for there is no "private property" to take. Slavery is but a bundle of barbarous pretensions, from which certain persons are to be released. At what price shall the bundle be estimated? How much shall be paid for the controlling pretension of property in man? How much allowed for that other pretension to

[1] Paradise Lost, Book XII. 64-71.

shut the gates of knowledge, and keep the victim from the Book of Life? How much given for ransom from the pretension to rob a human being of his toil and all its fruits? And, Sir, what "just compensation" shall be voted for renouncing that Heaven-defying pretension, too disgusting to picture, which, trampling on the most sacred relations, makes wife and child the wretched prey of lust and avarice? Let these pretensions be renounced, and Slavery ceases to exist; but there can be no "just compensation" for any such renunciation. Heart, reason, religion, the Constitution itself, rise in judgment against it. As well vote "just compensation" to the hardened offender who renounces disobedience to the Ten Commandments, and promises that he will cease to steal, cease to commit adultery, and cease to covet his neighbor's wife! Ay, Sir, there is nothing in the Constitution to sanction any such outrage. Such an appropriation would be unconstitutional.

Mr. Madison said in the Convention that it was "wrong to admit in the Constitution the idea that there could be property in men."[1] Of course it was wrong. It was criminal and unpardonable. Thank God, it was not done. But Senators admit this "idea" daily. They take it from themselves, and then introduce it where Mr. Madison said it was "wrong." But if "wrong" at the adoption of the Constitution, how much worse now! There is no instinct of patriotism, as there is no conclusion of reason, which must not be against the abomination; and yet, Sir, it is allowed to enter into these debates. Sometimes it stalks, and sometimes

[1] Debates in the Federal Convention, August 25, 1787: Madison Papers, Vol. III. pp. 1429, 1430.

it skulks; but whether stalking or skulking, it must be encountered with the same indignant rebuke, until it ventures no longer to show its head.

Putting aside, then, all objection, whether from open opposition or lukewarm support, the great question recurs, that question which dominates this debate, How shall Slavery be overthrown? The answer is threefold: first, by the courts, declaring and applying the true principles of the Constitution; secondly, by Congress, in the exercise of the powers belonging to it; and, thirdly, by the people, through an Amendment of the Constitution. Court, Congress, people, all may be invoked; and the occasion justifies the appeal.

1. Let the appeal be made to the courts. But, alas! one of the saddest chapters in our history is the conduct of judges, lending themselves to the support of Slavery. Injunctions of the Constitution, guaranties of personal liberty, and prohibitions against its invasion have all been forgotten. Courts, which should be asylums of Liberty, have been changed into strongholds of Slavery; and the Supreme Court of the United States, by final decision as shocking to the Constitution as to the public conscience, proclaimed itself tutelary stronghold of all. It was part of the national calamity, that, under the influence of Slavery, Justice, like Astræa of old, fled. But now, at last, in a regenerated Republic, with Slavery waning, and the people rising in judgment against it, let us hope that the judgments of courts may be reconsidered, and the powers of the Constitution in behalf of Liberty fully exercised, so that human bondage shall no longer find an unnatural support from the lips of judges, —

"and ancient fraud shall fail,
Returning Justice lift aloft her scale."

Sir, no court can afford to do an act of wrong. Its business is justice; and when, under any apology, it ceases to do justice, it loses those titles to reverence otherwise so willingly bestowed. There are instances of great magistrates openly declaring disobedience to laws "against common right and reason," and their names are mentioned with gratitude in the history of jurisprudence. There are other instances of men holding the balance and the sword, whose names are gathered into a volume as "atrocious judges." If our judges, cruelly interpreting the Constitution in favor of Slavery, do not come into the latter class, they can claim no place among those others who have stood for justice, like the rock on which the sea breaks in idle spray. Vainly do you attempt to frame injustice into a law, or to sanctify it by any judgment of court. From Cicero we learn, that, "if commands of the people, if decrees of princes, if *opinions of judges* were sufficient to constitute right, then were it right to commit highway robbery, right to commit adultery, right to set up forged wills."[1] And Augustine tells us, with saintly authority, that what is unjust cannot be law.[2] Every law and every judgment of court, to be binding, must have at its back the everlasting, irrepealable law of God. Doubtless the model decision of the American bench, destined to be quoted hereafter with most honor, because the boldest in its conformity with great principles of humanity and social order, was that of the Vermont judge who re-

[1] De Legibus, Lib. I. c. 16.

[2] "Ubi justitia vera non est, nec jus potest esse." — *De Civitate Dei*, Lib. XIX. c. 21, § 1.

fused to surrender a fugitive slave *until his pretended master could show a title-deed from the Almighty.*

But courts have no longer occasion for such boldness. They need not step outside the Constitution. It is only needed that they should follow just principles in its interpretation. Let them be guided by a teacher like Edmund Burke, who spoke as follows:—

"*Men cannot covenant themselves out of their rights and their duties;* nor by any other means can arbitrary power be conveyed to any man. *Those who give to others such rights perform acts that are void as they are given. . . .* Those who give and those who receive arbitrary power are alike criminal, and there is no man but is bound to resist it to the best of his power, wherever it shall show its face to the world. It is a crime to bear it, when it can be rationally shaken off."[1]

Or let them be guided by that other teacher, Lord Chatham, when he said:—

"With respect to the decisions of courts of justice, I am far from denying them their due weight and authority; yet, placing them in the most respectable view, I still consider them, not as law, but as an evidence of the law; and before they can arrive even at that degree of authority, it must appear that they are founded in and confirmed by reason, — that they are supported by precedents taken from good and moderate times, — that they do not contradict any positive law, — that they are submitted to without reluctance by the people, — that they are unquestioned by the legislature (which is equivalent to a tacit confirmation), — *and, what in my judgment is by far the most important, that they do not violate the spirit of the Constitution.*"[2]

[1] Speech in the Impeachment of Warren Hastings, February 16, 1788: Works (London, 1822), Vol. XIII. pp. 168, 169.

[2] Speech on the Address of Thanks, January 9, 1770: Hansard's Parliamentary History, Vol. XVI. col. 661.

Or let them go back to that early Spanish testimony against the Slave-Trade and Slavery, when De Soto, in lectures at Salamanca, thus spoke: —

"It is affirmed that the unhappy Ethiopians are by fraud or force carried away and sold as slaves. If this is true, neither those who have taken them, nor those who purchased them, nor those who hold them in bondage can ever have a quiet conscience till they emancipate them, *even if no compensation should be obtained.*" [1]

Or let them accept the unanswerable judgment of that acute moralist, the late Archbishop Whately, who in simple words shows the superior title of the slave: —

"A slave cannot fairly be called a thief for taking anything from his master, or for stealing his own liberty. He may be considered as in an enemy's country, in the midst of those who recognize no rights of his as against them, and who therefore have no rights as against him." [2]

If courts were thus inspired, it is easy to see that Slavery would disappear under righteous judgment.

2. Unhappily, courts will not perform the duty of the hour, and we turn elsewhere. Appeal must be made to Congress; and here, as has been fully developed, the powers are ample, unless in their interpretation you surrender in advance to Slavery. By a sin-

[1] De Soto, De Justitia et Jure, Lib. IV. Quæst. 2, Art. 2. Mackintosh, quoting these words, declares, with proper exultation, that "Philosophy and Religion appear by the hand of their faithful minister to have thus smitten the monsters in their earliest infancy." — *Dissertation on the Progress of Ethical Philosophy*, Sec. III.: Miscellaneous Works (London, 1851), p. 24.

[2] Paley's Moral Philosophy, with Annotations by Richard Whately (London, 1859): Annot., Book III. Part ii. ch. 3, *Slavery*, p. 178.

gle brief statute, Congress may sweep Slavery out of existence. Patrick Henry saw and declared, that, under the influence of a growing detestation of Slavery and the increasing "urbanity" of the people, this must be expected, while all the capacious war powers proclaim trumpet-tongued that it can be done constitutionally, and the peace powers echo back the war powers.

Here we encounter again the "execrable" pretension of property in man, with the attendant claim of "just compensation" for the renunciation of Heaven-defying wrongs. But this is no more incident to abolition by Act of Congress than by Amendment of the Constitution; so that, "if just compensation" can be discarded in one case, it can be in the other. But the votes on the latter proposition already taken in the Senate testify that it is discarded. Sir, let the "execrable" pretension never again be named, except for condemnation, no matter how or when it appears, or what form it takes. Let the "idea," originally branded as so "wrong" that it could not find place in the Constitution, never find place in our debates.

Even if Congress be not prepared for that single decisive measure promptly ending this whole question and striking Slavery to death, there are other measures by which the end may be hastened. The towering Upas may be girdled, even if not felled at once to earth. Already, by Acts of Congress, Slavery is abolished in the national capital and in the national territories. This is not enough.

The Fugitive Slave Bill, conceived in iniquity, and imposed upon the North as a badge of subjugation, may be repealed.

The coastwise Slave-Trade may be deprived of all support in the statute-book.

The traffic in human beings, as an article of "commerce among the States," may be extirpated.

And, above all, that odious rule of evidence, so injurious to justice and discreditable to the country, excluding the testimony of colored persons, may be abolished, at least in national courts.

And there is one other thing to be done. The enlistment of colored persons must be encouraged by legislation in every possible form; for enlistment is emancipation. That contract whereby the soldier-slave promises service at hazard of life, like the contract of marriage, fixes the equality of the parties, which Congress, for the national defence, and the national character also, will sacredly maintain.

All these things at least may be done, and, when they are done, Heaven and Earth will be glad, for they will have assurance that all will be done.

3. Nor will even these suffice. The people must be summoned to confirm the whole work. It is for them to put the capstone upon the sublime structure. An Amendment of the Constitution may do what courts and Congress decline to do, or, even should they act, it may cover their action with its panoply. Such an Amendment will give completeness and permanence to Emancipation, while bringing the Constitution into avowed harmony with the Declaration of Independence. Happy day, long wished for, destined to gladden those beatified spirits who have labored on earth to this end, but died without the sight!

And yet I would not indiscreetly take counsel of our

hopes. From the nature of the case, such an Amendment cannot be consummated at once. Time must intervene, with opportunities of opposition. It can pass Congress only by a vote of two thirds in both branches; and then it must be adopted by the Legislatures of three fourths of the States. Even under most favorable circumstances, it is impossible to say when it can become part of the Constitution. Too tardily, I fear, for all the good that is sought. Therefore I am not content with this measure alone. It postpones till to-morrow what ought to be done to-day; and I much fear that it will be made the apology for indifference to other efforts of direct practical value, — as if it were pardonable to neglect for a day the duties we owe to Human Rights.

> "To-morrow, and to-morrow, and to-morrow
> Creeps in this petty pace from day to day,
> To the last syllable of recorded time;
> And all our yesterdays have lighted fools
> The way to dusty death."

When will rise that to-morrow's sun, to witness that other sun filling the land with the light of Freedom?

For myself, let me confess, that, in presence of the mighty events now thronging, I feel how insignificant is any individual, whether citizen or Senator; and yet, humbly longing to do my part, I would not put off till to-morrow what ought to be done to-day, — especially can I not consent to this great postponement. Our fellow-men are in bonds: they must be relieved. Most beautiful that ancient story, where the philosopher, while on a mission to a great king for the release of captives, being invited to sup, replied in the famous words of Ulysses, "O Circe! what man of a right mind could let himself touch meat or drink before he had ransomed his companions and beheld them with his

eyes?" The philosopher did not speak in vain. The captives were set free at once.[1]

Beyond my general desire to see an act of universal emancipation, at once and forever settling this great question, so that it may no longer be the occasion of strife between us, there are two other objects ever present to my mind as a practical legislator: first, to strike at Slavery wherever I can hit it; and, secondly, to clear the statute-book of all existing supports of Slavery, so that this great wrong may find nothing there to which it can cling for life. Less than this, at the present moment, when Slavery is still menacing, would be abandonment of duty.

So long as a single slave continues anywhere beneath the flag of the Republic, I am unwilling to rest. Too well I know the vitality of Slavery with its infinite capacity of propagation, and how little Slavery it takes to make a Slave State with all the cruel pretensions of Slavery. The down of a single thistle is full of all possible thistles, and a single fish is said to contain many millions of eggs, so that the whole sea may be stocked from its womb.

The modern founder of political science, Machiavelli, writer as well as statesman, in his most instructive work, the Discourses on Livy, has a chapter entitled, "For a Republic to have long life, it is necessary to bring it back often to its origin":[2] where he shows how the native virtue in which a Republic was founded becomes so far corrupted that in process of time the body-politic is destroyed, — as in the case of the natural body, where,

[1] Plutarch's Lives, tr. Clough, Vol. IV. p. 565, Appendix. Diogenes Laertius, De Clarorum Philosophorum Vitis, etc., Lib. IV. c. 2, *Xenocrates*.

[2] Discorsi sopra la prima Deca di T. Livio, Lib. III. cap. 1.

according to the doctors of medicine, something is daily added, from time to time requiring cure. The remarkable publicist teaches under this head that Republics are brought back to their origin, and to the principles in which they were founded, by pressure from without, where prudence fails within; and he affirms that the destruction of Rome by the Gauls was necessary, in order that the Republic might have a new birth, with new life and new virtue, — all of which ensued, when the barbarians were driven back. If the illustration is fanciful, there is wisdom in the counsel; and now the time has come for its application. The Gauls are upon us, not from a distance, but domestic Gauls, flinging their swords, like Brennus, into the scales; and we, too, may profit by the occasion to secure for the Republic a new birth, with new life and new virtue. Happily, the way is easy; for there is no doubt of its baptismal vows, or the declared sentiments of its origin. There is the Declaration of Independence: let its solemn promises be redeemed. There is the Constitution: let it speak according to the promises of the Declaration. Let it speak, and the last act of the great American tragedy will be ended, while the stage is piled with corpses. From its early beginning in the hold of the Dutch ship on its way to Jamestown, as the Pilgrims in the Mayflower were on their way to Plymouth, down to this bloody Rebellion, Slavery has been a prolonged tragedy. History and Art will hereafter portray the scenes. Nor can its death be otherwise than an epoch, not only for our own country, but for mankind. Slavery in its distant origin was the substitute for death. The slave was allowed to live, but without the rights of man. Instead of death in the grave with its insensibility and decay, there was death

in life with constant degradation and suffering. Hence in all ages the awakened sympathies of the good and humane, — heard sometimes in sorrow for the unhappy fate of an individual, and then in appeal for a race.

How truly affecting are the words of Homer, depicting the wife of Hector toiling as bondwoman at the looms of her Grecian master, — or those other undying words which exhibit man in Slavery as shorn of half his worth! The story of Joseph sold by his brothers has been repeated in every form, touching innumerable hearts. Borrowed from the Bible, it figured in the moralities of the Middle Ages and in the later theatre of France. How genius triumphed over Slavery is part of this testimony. Æsop, the fabulist, — one of the world's greatest teachers, if not lawgivers, — was a slave; so also was Phædrus, the Roman fabulist, whose lessons are commended by purity and elegance; and so, too, was Alcman, the lyric, who shed upon Sparta the grace of poesy. To these add Epictetus, sublime in morals, — and Terence, incomparable in comedy, who gave to the world that immortal verse, which excited the applause of the Roman theatre, "I am a man, and nothing which concerns mankind is foreign to me." Nor should it be forgotten that the life of Plato was checkered by Slavery.

In later days the sympathy is more for a race than for individuals. Unhappily, the ban of color has become a certificate of Slavery, and a large portion of the human family, whose offence was a skin darkened by the hand of God, has been degraded to the condition of chattels. The sympathies once awakened only for illustrious gifts are now bestowed upon suffering humanity, marking an advance in civilization.

To be a man is a sufficient title-deed for the rights of man, which we seek to establish. But their triumph among us will be the certain herald of triumph everywhere. In other places Slavery may linger yet a little longer; but its death here will make its continued existence impossible wherever civilization prevails.

Mr. President, the immediate question before us is on the proposition to prohibit Slavery in our country by Constitutional Amendment; and here I hope to be indulged with regard to the form it should take. A new text of the Constitution cannot be considered too carefully even in this respect, especially when it is nothing less than a new article of Freedom. For a moment we are performing something of that duty which belongs to the *conditores imperiorum*, placed foremost by Lord Bacon in "the degrees of sovereign honor,"[1] and "words" become "things." From the magnitude of the task we may naturally borrow circumspection, and I approach this part of the question with suggestion rather than argument.

Let me say frankly that I should prefer a form of expression different from that having the favor of the Committee. They have selected what was intended for the old Jeffersonian Ordinance, sacred in our history, although, let me add, they have not imitated it closely. But I must be pardoned, if I venture to doubt the expediency of perpetuating in the Constitution language which, if it have any signification, seems to imply that "Slavery or involuntary servitude" may be provided for "the punishment of crime." Instances anterior

[1] Essays: Of Honor and Reputation.

to the Constitution show the origin of this exception. In the absence of penitentiaries, Slavery was a punishment adjudged by courts. According to early Colonial records in Massachusetts, one William Andrews "was censured to be severely whipped and delivered up as a slave to whom the Court shall appoint."[1] But it cannot be intended to sanction such judgment now. There can be no reason why Slavery should not be forbidden positively and without exception, especially as "imprisonment" cannot be confounded with this "peculiar" wrong. If my desires could prevail, I would put aside the Ordinance, and find another form.

I know nothing better than this: —

"All persons are equal before the law, so that no person can hold another as a slave: and the Congress shall have the power to make all laws necessary and proper to carry this declaration into effect everywhere within the United States and the jurisdiction thereof."

By the latter clause the declaration is plainly applicable to the States, while the earlier words assert the equality of all persons before the law, — a fruitful principle, assuring to all the same rights. *Inter pares non est potestas*, "Among equals there is no superiority," is a received maxim of law, expressing a natural truth. Therefore, where all are equal, there can be no Slavery; so that, in declaring equality before the law, you make Slavery, alike with superiority, impossible. This language, though unknown to the Common Law and new in our country, has a fixed place in modern constitutional history. To understand how it has reached

[1] Records of the Governor and Company of the Massachusetts Bay, December 4, 1638, Vol. I. p. 246. Palfrey, History of New England, Vol. I. p. 553.

its present authority we must repair for a moment to France, so rich in experience and in genius.

Bills of Rights in England were moderate in terms, compared with our Declaration of Independence, and with the Declarations of Rights first announced by France in the throes of terrible revolution, and since recognized among the permanent triumphs of that prodigious outbreak. Until this period there had been no written Constitution in France, though since there have been many in succession. The earliest, in September, 1791, was preceded by a Declaration of Rights, proposed by Lafayette, which, after setting forth that "ignorance, forgetfulness, or contempt of the rights of man are the sole causes of public evils and of the corruption of Governments," undertakes to announce what it calls "the natural rights of man, inalienable and sacred"; and this is done —

"To the end that this Declaration, being constantly present to all the members of the social body, may incessantly recall to them their rights and their duties; to the end that the acts of the legislative power, and those of the executive power, being every moment capable of comparison with the object of every political institution, may be more respected by them; to the end that the claims of the citizens, being henceforth founded on simple and incontestable principles, may always turn to the maintenance of the Constitution and to the happiness of all."

This too elaborate, but instructive preamble, is followed by an article with a generality of expression not unlike that of our own Declaration: —

"Article I. Men are born and continue free and *equal in rights.*"

In the sixth article of the Declaration this is explained by declaring that the law "ought to be the same for all, whether it protect, whether it punish," and then it speaks of "all citizens being *equal in its eyes*." [1]

In June, 1793, another Constitution was adopted, which, after a brief preamble, opens with these articles: —

"ARTICLE I. The object of society is the common happiness. Government is instituted to guaranty to man the enjoyment of his natural and imprescriptible rights.

"ARTICLE II. These rights are equality, liberty, security, property.

"ARTICLE III. *All men are equal* by nature and *before the law*." [2]

Here the new statement begins to appear. Men are equal by nature and before the law.

"Equal before the law." This term, which, by its essential accuracy and self-limitation, excludes all uncertainty, exaggeration, or vagueness, was already known in the literature of France. Voltaire, whose wonderful genius was so peculiarly French, with that constant clearness which is the boast of the French language, had used it in one of his philosophical poems, where political truth is commended in the manner of Pope. The first of these was in 1734, on "Equality of Conditions," where he says, "Mortals are equal; their mask is different"; and then, "To have the same rights to hap-

[1] Collection des Constitutions, Chartes et Lois Fondamentales des Peuples de l'Europe et des deux Amériques, par MM. P. A. Dufau, J. B. Duvergier, et J. Guadet, (Paris, 1823,) Tom. I. pp. 97, 98.

[2] Ibid., p. 135.

piness, this is for us the perfect and only equality";[1] thus, like our Declaration of Independence, placing "the pursuit of happiness" among natural rights. This assertion of equal rights was defined in the poem on "The Law of Nature," addressed to Frederick, King of Prussia, and written in 1752, where he says, "*The law* in every State ought to be universal; *mortals*, whoever they may be, *are equal before it.*" But I cite the precise words:—

> "*La loi* dans tout État doit être universelle:
> Les mortels, quels qu'ils soient, *sont égaux devant elle.*"[2]

This happy statement naturally passed from the poem to the Constitution.

It was much to declare equality; it was more still to do it with accuracy of form defying assault. This conquest of the Revolution assumed its most precise enunciation on the restoration of the Bourbons, when it appeared as the first article in the Constitutional Charter of Louis the Eighteenth, promulgated in 1814.

"ARTICLE I. *Frenchmen are equal before the law*, whatever may otherwise be their titles and their ranks."[3]

And it was repeated by Napoleon, April 22, 1815, on his return from Elba.[4]

1 "Les mortels sont égaux; leur masque est différent.
. . . .
Avoir les mêmes droits à la félicité,
C'est pour nous la parfaite et seule égalité."
Discours en Vers sur l'Homme; Discours I., *De l'Égalité des Conditions*: Œuvres (Paris, 1833), Tom. XII. pp. 45, 47.

2 Poëme sur la Loi Naturelle, 4me Partie: Ibid., p. 176.

3 Collection des Constitutions, etc., par Dufau, Duvergier, et Guadet, Tom. I. p. 256.

4 Ibid., p. 247.

At the installation of Louis Philippe as king, in August, 1830, with Lafayette by his side, the same declaration was placed at the head of the Constitutional Charter.[1]

Meanwhile this expression passed from France into the Constitutions of other countries: of Holland, in 1801, where the declaration was, "All members of society are equal before the law, without distinction of rank or birth";[2] of the Grand Duchy of Warsaw, created by Napoleon in 1807, where we meet these terms: "Slavery is abolished; all citizens are equal before the law";[3] of the Canton of Zug, in Switzerland, in 1814, where, among "General Principles," is the article, "All the citizens of the Canton are equal before the law, and there are no subjects in the Canton of Zug";[4] of Bavaria, in 1818, where "equality of the rights of the citizens before the law" is enumerated in the preamble among "the principal features of the Constitution";[5] of Bolivia, in South America, where in 1825 we meet the words, "All citizens are equal before the law";[6] of Portugal, in 1826, where it is declared, "The law is equal for all, whether it protects, whether it punishes";[7] of Brazil, where in the same year was a similar declaration;[8] and then of Greece, not only in the Provisional Constitution of 1822, but in the permanent Constitution of 1827, when the Greek nation "proclaims before God and before man its political existence and its independence," and then among its fundamental principles declares, "All Greeks are equal before the law."[9]

[1] Collection des Constitutions, etc., par Dufau, Duvergier, et Guadet, Supplément, p. 212.
[2] Ibid., Tom. III. p. 122.
[3] Ibid., Tom. IV. p. 73.
[4] Ibid., Tom. II. p. 511.
[5] Ibid., Tom. I. p. 232.
[6] Ibid., Supplément, p. 188.
[7] Ibid., p. 41.
[8] Ibid., p. 155.
[9] Ibid., p. 74.

The French Revolution of 1830 quickened this statement anew. Belgium adopted it in 1831,[1] and even Austria in 1849; the latter power as follows: "All subjects are equal before the law, and judged according to the same fundamental rights";[2] and Sardinia, in 1848, as follows: "All natives of the kingdom, whatever their titles or their rank, are equal before the law."[3] The same words reappear in the Fundamental Statute of Italy, in 1861, when that classical land became a nation.[4]

Doubtless the extensive adoption of this formula testifies to its value in expressing an important principle, being nothing less than the primal truth declared by our fathers. All will confess its comparative precision. The sophistries of Calhoun, founded on the obvious inequalities of body and mind, are all overthrown by this simple statement, which, though borrowed latterly from France, is older than French history. I have had occasion before to remind the curious student that the ancient Greek of Herodotus supplies a single word for this phrase, when it is said that "the Government of the many has the most beautiful name of *ἰσονομία*," or *equality before the law*.[5] The father of history was right. The name is most beautiful. But he did not see all its beauty; nor did the three Persian satraps, whose dialogue he reports,[6] know how great a truth was re-

[1] Annuaire Historique Universel, 1831, Appendice, Documents Historiques, p. 155.

[2] Ibid., 1849, Appendice, Documents Historiques, p. 134.

[3] British and Foreign State Papers, 1847-48, Vol. XXXVI. p. 890.

[4] Art. XXIV. Statuto Fondamentale del Regno: Annuario Diplomatico del Regno d' Italia.

[5] History, Book III. c. 80. See, *ante*, Vol. II. p. 339.

[6] Hallam says of this scene, which occurred after the murder of Smerdis the Magian, that it is "conceived in the spirit of Corneille." — *Middle Ages* (London, 1853), Vol. II. p. 344, note, Ch. VIII. Part 2.

vealed. Not till after generations and ages had passed was *equality before the law* authoritatively declared; and now, while invoking it as a rule, we repair to that bountiful Greek tongue, which, at that early day, by a single word, anticipated our modern exigency. Such a word, originally adopted in our Declaration of Independence, would have superseded criticism.

Enough has been said to explain the origin of a term which has played an important part. Though traced to distant antiquity, and now adopted in various countries, it derives its modern authority from France, where it is the "well-ripened fruit" of unprecedented experience in the discussion of great problems in political science. Naturally, it does not come from England; for the idea finds little favor in that hierarchical kingdom. In France Equality prevails more than Liberty: in England Liberty more than Equality. Here among us both should find a home; and such a declaration as I now propose, embodying *Liberty and Equality*, will keep the double idea perpetual in the public mind and conscience, "to warn, to comfort, and command." The denial of Liberty in the Rebel States begins with the denial of Equality; so that our work is not completely done without the assertion of both principles.

In making Equality the fundamental principle, underlying Liberty itself, I follow reason and authority. Clearly, where all are equal, there can be no Slavery. Equality makes Slavery impossible, while it broadens Liberty into that community of right which is the essence of Republican Government. A remarkable French writer, La Boëtie, whose short life was brightened by the friendship of Montaigne, well exhibits the

dependence of Liberty upon Equality. In his little work, "Voluntary Servitude," which inspires astonishment in all who read it, while vindicating and exalting Liberty as derived from Nature, and setting forth how "this good mother" has given to us all the whole earth for a home, has lodged us all in the same house, has fashioned us all according to the same pattern, so that each can see and recognize one in another, and then, alluding to the gift of voice and speech for our better mutual acquaintance and fraternity, also to the means by which Nature ties and binds so strongly the knot of our alliance and society, also to the manifestation in all things that she did not wish so much to make us all united as all one, the precocious philosopher declares: "There can be no doubt that we are all naturally free, *since we are all companions*, and it cannot fall into any human head that Nature has put anybody in slavery, *having put us all in company*."[1] Here is exhibited that controlling Equality which has prevailed in France.

A recent English publicist and professor exhibits also the predominance of this principle: I refer to Mr. Maine, who, in his work on "Ancient Law," after tracing it to the jurisconsults of the Antonine era, and asserting that it "is one of a large number of legal propositions which in progress of time have become political," attests the influence of France, which, according to him, is seen in our own Declaration of Independence, where what he calls "the specially French assumption," that all men are born equal, is joined with what he calls "the assumption more familiar to Englishmen," that all men

[1] Discours de la Servitude Volontaire: Œuvres, ed. Feugère, (Paris, 1846,) pp. 26, 27.

are born free; and he adds, that, "of all the 'principles of 1789,' it is the one which has been least strenuously assailed, which has most thoroughly leavened modern opinion, and which promises to modify most deeply the constitution of societies and the politics of states."[1] And now I venture to suggest that this guiding principle be recognized by us in words commended by usage and intrinsic character.

Should the Senate not incline to this form, there is still another I would suggest: —

"Slavery shall not exist anywhere within the United States or the jurisdiction thereof; and the Congress shall have power to make all laws necessary and proper to carry this prohibition into effect."

This is simple, and avoids all language open to question. The word "Slavery" is explicit, and describes precisely what you propose to blast. There is no doubt with regard to its signification. It cannot be confounded with "the punishment of crime"; for imprisonment is not Slavery; nor can any punishment take the form of a wrong which stands by itself, peculiar, terrible, outrageous. Therefore nothing about punishment should find place in the rule we now ordain. Beyond this I would avoid technicality, which is out of place in such a text; and here I am encouraged by other examples. An early Constitution of France prohibited Slavery in every form, when it said: "Every man can engage his

[1] Ancient Law: its Connection with the Early History of Society, and its Relation to Modern Ideas, by Henry Sumner Maine, (London, 1861,) pp. 92–96. In harmony with this English writer is M. Emile de Girardin, the French journalist and publicist, who, in a work which appeared in 1872, says, "A single line which follows resumes all the Revolution of 1789"; and he then quotes in capitals, "Frenchmen are equal before the law."

time and his services, but he cannot sell himself, nor be sold; his person is not alienable property."[1] That of the Greek nation was equally thorough: "It is not permitted in Greece to sell or to buy men; every slave, whatever may be his nation or religion, is free from the time he puts foot on Greek territory."[2] Nothing can be simpler than this prohibition in the Bavarian Constitution: "Servitude is everywhere suppressed";[3] or than this in the Constitution of Wurtemberg: "Serfdom is forever abolished";[4] or than this in the Constitution of the French Republic in November, 1848: "Slavery cannot exist upon any French soil."[5] Nor can anything be more simple and thorough than these words from Hayti: "Slaves cannot exist on the territory of the Republic. Slavery there is forever abolished."[6] Naturally a Republic of enfranchised slaves made this the first article of its Constitution, while sense as well as instinct supplied the form. And, Sir, in all these historic instances you will remark that there is nothing technical.

If the Senate is determined to follow the Jeffersonian Ordinance, then I prefer that it should be the Ordinance actually, and not as reported by the Committee. And I would complete the work by expelling from the Constitution all those words so often misconstrued, perverted, and tortured to a false support of Slavery.

[1] Collection des Constitutions, etc., par Dufau, Duvergier, et Guadet, Tom. I. p. 150.

[2] Ibid., Supplément, p. 75.

[3] Ibid., Tom. II. p. 228.

[4] Ibid., p. 279.

[5] Annuaire Historique Universel, 1848, Appendice, Documents Historiques, p. 41.

[6] Collection des Constitutions, etc., par Dufau, Duvergier, et Guadet, Tom. V. p. 239.

But while desirous of seeing the great rule of Freedom we are about to ordain embodied in a text which shall be like the precious casket to the more precious treasure, yet I confess that I feel humbled by my own endeavors. And whatever the judgment of the Senate, I am consoled by the thought that the most homely text containing such a rule will be more beautiful far than any word of poet or orator, and will endure to be read with gratitude, when the lofty dome of this Capitol, with the statue of Liberty which crowns it, has crumbled to earth.

CASTE AND PREJUDICE OF COLOR.

LETTER TO THE YOUNG MEN'S ASSOCIATION OF ALBANY,
APRIL 16, 1864.

THE managers of the Young Men's Association of Albany, after excluding from their lecture-room all persons not of an approved color, invited Mr. Sumner to speak on Lafayette. He returned the following answer.

SENATE CHAMBER, April 16, 1864.

SIR, — You invite me to deliver an address on Lafayette before the Young Men's Association of Albany. In view of a recent incident in the history of your Association, I am astonished at the request.

I cannot consent to speak of Lafayette, who was not ashamed to fight beside a black soldier, to an audience too delicate to sit beside a black citizen. I cannot speak of Lafayette, who was a friend of universal liberty, under the auspices of a society which makes itself the champion of caste and vulgar prejudice.

I have the honor to be, Sir, your obedient servant,

CHARLES SUMNER.

C. W. DAVIS, Esq.,
Cor. Sec., &c., Albany.

FINAL REPEAL OF ALL FUGITIVE SLAVE ACTS.

SPEECH IN THE SENATE, ON A BILL FOR THIS PURPOSE, APRIL 19, 1864.

DECEMBER 10, 1863, Mr. Sumner gave notice of his intention to introduce a bill to repeal all acts for the rendition of fugitive slaves.

February 8, 1864, in pursuance of previous notice, Mr. Sumner asked and obtained leave to introduce the bill above mentioned, which was read twice by its title, and referred to the Select Committee on Slavery and Freedmen.

February 29th, Mr. Sumner reported from the Committee a bill with an accompanying report, of which ten thousand extra copies were ordered to be printed.[1] There was a minority report by Mr. Buckalew, of Pennsylvania, which was also printed in equal number.

The bill was in the following terms: —

"A Bill to repeal all acts for the rendition of fugitives from service or labor.

"*Be it enacted by the Senate and House of Representatives in Congress assembled*, That all Acts of Congress, or parts of Acts, providing for the rendition of fugitives from service or labor, be and the same are hereby repealed."

March 7th, Mr. Sumner asked the Senate to take up the bill, with a view to make it the special order for a future day. This motion was agreed to, and then, on his further motion, it was made the special order for March 9th. The disposition to delay showed itself the next day, when Mr. Davis, of Kentucky, proposed to make another question a special order for the same time. Mr. Sumner reminded him that the repeal of the Fugitive Slave Act was a special order at that time. Mr. Davis replied, "I suppose that can wait a little." Mr. Sumner: "I do not wish to have that wait at all. It is a disgrace to the country and the statute-book which we want to get rid of." When it was

[1] *Ante*, Vol. X. p. 338.

called up at the appointed time, Mr. Davis expressed a desire for postponement, and then, on motion of Mr. Sumner, at the suggestion of Mr. Hendricks, of Indiana, it was made the special order for March 16th, at one o'clock. Owing to the pendency of an Appropriation Bill, as unfinished business, on this day, it lost its place.

March 18th, Mr. Sumner, finding that Mr. Davis was not ready to proceed with his remarks, moved to make the bill the special order for March 22d, at one o'clock. This motion was lost, — Yeas 19, Nays 20. Mr. Sumner then said: "I now deem it my duty to give notice that I shall take every proper occasion to call the bill up, and press its consideration upon the Senate."

Meanwhile the attention of the Senate was occupied by other things, especially by the Constitutional Amendment abolishing Slavery.

April 18th, Mr. Sumner appealed to Mr. Fessenden, who had charge of the Legislative Appropriation Bill, then under consideration, to yield, so that the other bill could be considered. At this time he said: "The Senator says it will make a great deal of debate. I doubt if it will. I think the topic has already been amply discussed in connection with other matters. I have several times yielded to amiable pressure, reluctantly, always against my own sense of duty, but from desire to oblige associates in this body. One Appropriation Bill has been interposed, on the motion of the Senator from Maine, which has taken several days. Now, I submit, the time has come when this bill ought to be considered. Let us give one day to it, at least. I say this with reluctance, because I see that the Senator has come prepared to go on with his bill, and I respect so much the order of business and the preparations of Senators to do their part, that I do not interfere, except most reluctantly. I am for the Appropriation Bill. The Senator knows that I am ever in my seat to sustain all his motions on Appropriation Bills; but this bill is committed to my care, and I therefore ask him to allow it to be proceeded with to-day. There is in the Appropriation Bill an innate vitality; it cannot lose by delay; the public interests cannot suffer; but I do not doubt that all these, and the good name of the country, suffer by every day's delay in the repeal of the Fugitive Slave Act." Mr. Fessenden said that Mr. Sumner was "at liberty, if he chose, to move that that bill be taken up and this be laid aside," and that he should ask the judgment of the Senate.

April 19th, Mr. Sumner moved that the Senate proceed with the bill, and this motion was agreed to, — Yeas 26, Nays 10. The Senate, as in Committee of the Whole, considered the bill, and it was reported to the Senate without amendment, ordered to be engrossed for a third read-

ing, and was read the third time, without a division, and without a word of debate. It only remained to put the question on its final passage, when Mr. Foster, of Connecticut, remarked that he was "not prepared to see this bill passed just now"; he had "supposed the Senator from Massachusetts was to address the Senate upon it." Mr. Sumner had "not the least desire to address the Senate"; he did "not wish to say a word upon it." Mr. Foster "did not apprehend that the bill was to be put on its passage at the present time, and expected to say something upon it." Mr. Pomeroy, of Kansas, remarked, "We may as well pass the bill now." The Chair put the question, and the yeas and nays were ordered, when Mr. Hendricks spoke against the bill. He said: "It may be that our fathers erred in the agreement among themselves that a fugitive slave should be returned; it may be that it was a mistake on their part; but while their agreement stands, and while my oath is upon my conscience to respect that agreement, I cannot vote for a bill like this." The debate was opened.

Mr. Sherman, of Ohio, had "some doubt about the expediency of now repealing the law of 1793." Mr. Sumner said that the Committee "felt that we had better make a clean thing, purify the country, and lift it before foreign nations, which could be only by washing our hands of Slavery." Mr. Sherman was "not guided exactly by the motives of the honorable Senator from Massachusetts"; he would "give to the people of the Southern States, the few that are left who have the right to enforce the Constitution against us, their constitutional rights fully and fairly." According to him, "the law of 1793 was framed by the men who framed the Constitution," and "has been declared to be valid and constitutional by every tribunal that has acted upon it." Mr. Sumner replied, that "it was declared to be unconstitutional in certain particulars by the Supreme Court of the United States in the Prigg case, and it is among the records in the life of Judge Story, who gave the opinion in that case, that the fatal objection of a failure to give a trial by jury in a case of human freedom was never argued before the Court, and that he personally considered it an open question." Mr. Sherman preferred "not to repeal the law of 1793, about the constitutionality of which he had little doubt." Mr. Sumner replied, "Then the Senator has little doubt that under the Constitution a human being may be given over to Slavery without a trial by jury." Mr. Sherman "would not go into the discussion of that question." Finding that the bill had passed the stage when it could be amended, he moved to reconsider the vote ordering it to be engrossed and read a third time, which was done, when he moved to add these words: —

"Except the Act approved February 12, 1793, entitled 'An Act respecting fugitives from justice and persons escaping from the service of their masters.'"

Mr. Henderson, of Missouri, proposed to repeal the Act of 1850, leaving the Act of 1793 in force. Mr. Sherman thought "we had better repeal all the laws on the subject except the Act of 1793." Mr. Reverdy Johnson said: "The Constitution as it is now, according to my interpretation of it, not only authorized the passage of the Act of 1793 and the passage of the Act of 1850, but made it the duty of Congress to pass some law of that description." Mr. Sumner followed.

MR. PRESIDENT, — I shall not be carried into extended debate, but shall content myself with replying directly to what has been said on the other side.

There is, first, the Senator from Ohio [Mr. SHERMAN], who intervened to arrest the generous purpose of the Senate, as it was about to vote, by a motion to preserve the old Act of 1793. Strange that now, while we are in deadly conflict with Slavery, it should be proposed to keep alive an ancient support of Slavery. For the Senator gravely insists, and the Senator from Maryland [Mr. REVERDY JOHNSON] insists with him. But the Senator from Ohio does not seem aware of the character of the statute he would preserve. Let me remind him that by this enactment, towards which he is so tender, a fellow-man may be hurried before a magistrate and doomed to Slavery without trial by jury. Can this be constitutional? Will the Senator sanction such a thing?

Then the other Senator, who is so familiar with our jurisprudence, takes exception to the statement that Mr. Justice Story admitted that the constitutionality of the Act of 1793 had never been affirmed by the

Supreme Court. He thinks that this learned judge never made any such statement. But he is mistaken. Here is a volume containing the Life and Letters of Joseph Story, carefully prepared and published by his son. I turn to the passage.

"One prevailing opinion, which has created great prejudice against this judgment, is, that it denies the right of a person claimed as a fugitive from service or labor to a trial by jury. This mistake arises from supposing the case to involve the general question as to the constitutionality of the Act of 1793. But in fact no such question was in the case, and the argument that the Act of 1793 was unconstitutional, because it did not provide for a trial by jury according to the requisitions of the sixth [seventh] article in the Amendments to the Constitution, having been suggested to my father, on his return from Washington, *he replied, that this question was not argued by counsel nor considered by the Court, and that he should still consider it an open one.*"[1]

Evidently, according to this authentic record by his son, the necessity of a trial by jury was not argued by counsel nor considered by the Court, while the judge for himself declared that he should consider it an "open" question; so that the constitutionality of the Act in this important respect has not been affirmed. But the Senate is now asked to affirm it. We are asked to vote that a fellow-man be handed over to Slavery without trial by jury. To me this proposition is hateful beyond the power of words to express.

But the Senator, not content with affirming the constitutionality of the Act of 1793, has plunged into a general discussion on the fugitive clause of the Con-

[1] Life and Letters of Joseph Story, edited by his Son, Vol. II. p. 396.

stitution. He insists laboriously that it was intended to cover fugitive slaves. When I reminded him that its authors might have intended it to cover fugitive slaves, without succeeding in their attempt, he still insists that it does cover fugitive slaves. Well, Sir, there I meet him point-blank. I insist, that, whatever the original intention of the framers of that clause, they did not leave it so as to cover fugitive slaves. It remains a question of construction, and the language employed is not applicable to fugitive slaves. It does not describe them, and cannot by any just tribunal be extended to embrace them. If the prepossessions of the Senator were more evenly balanced, I should not doubt his judgment on this point, which in the light of jurisprudence is so clear.

There is a rule of interpretation which the Senator will not call in question. Where any language is open to two constructions, one beneficent and the other odious, *that which is odious must be rejected.* I do not stop to adduce authorities. The rule is unquestionable, and the authorities are ample. But keep in mind the conclusion: that which is odious must be rejected. Now the Senator has already admitted that the language of the clause is applicable to apprentices. Very well. That is enough. In its application to apprentices, redemptioners, and the like, it is exhausted, so that it cannot be made to cover a slave without offending against the rule requiring us to adopt the construction least odious. And, Sir, if we go further and closely scan the clause, we find that the words employed are all applicable to a relation of *contract* or *debt,* and not to a relation founded on *force.* The clause is applicable to a "person," and not to a *thing,*

and this "person" is to be surrendered on claim of the person to whom his service or labor may be *due*. But, clearly, no labor or service can be *due* from slave to master. The whole pretension is an absurdity. And if you give to this word its legitimate application, you must restrict it to a case of *contract* or *debt*. In this reply I omit the argument founded on history, and the well-known opinions of leading minds in the Convention, confining myself to the text of the Constitution.

But the Senator dwells especially on the words "held to service or labor in one State *under the laws thereof*," and triumphantly declares that slaves were included under this language. Here again he is mistaken. Apprentices and redemptioners were held under "laws"; but I need not remind the Senator of the admission repeatedly made on this floor by Mr. Mason, author of the last Fugitive Slave Act, that there were no "laws" for Slavery in any Slave State, — at least, that none could be produced. Besides, as a jurist, the Senator surely will recollect the ancient truth, that injustice cannot be "law," but is always to be regarded as an "abuse" or a "violence," even though expressed in the form of "law." In presence of this principle, which has the sanction of as great a lawyer as St. Augustine, and in the face of the positive assertion of Mr. Mason, that no "law" for Slavery can be found in the Slave States, what becomes of the argument of the Senator? Sir, the case is clear. No ingenuity of honest effort can ever make the words cited by the Senator, or any other words in that much debated clause, sanction Slavery and the hunting of slaves. To proceed with his argument, the Senator must begin by setting aside those commanding rules of interpre-

tation which are binding on him as on myself. If, where words are susceptible of two significations, one beneficent and the other odious, the former only can be taken, then must the Senator restrict this clause to that signification which is not odious. And again, if every word is always to be construed so as most to favor Liberty, then must the Senator follow implicitly this rule. But these two rules make it impossible to torture the clause into any *odious* or *tyrannical* signification. They keep it clean and pure from Slavery.

Sir, one feels humbled by the necessity of this discussion, — that at this late day he should be called to vindicate the Constitution of his country against glosses and interpretations in the interest of Slavery. Pardon me, if, for a moment, leaving the two Senators who seek to foist Slavery into the Constitution, I turn to the question itself, not so much for argument as for statement. If I seem to repeat, it is because there are certain points which I desire to impress upon the Senate. To my mind nothing is clearer than that, according to unquestionable rules of interpretation, the clause of the Constitution, whatever the alleged intent of its authors, cannot be considered applicable to slaves. Such is Slavery, that, from the nature of the case, it cannot be sanctioned or legalized except by "positive" words. *It cannot stand on inference.* This rule, which no reasoning can shake, drove Lord Mansfield to his great judgment in Somerset's case. African Slavery had for two generations prevailed in England. Eminent lawyers and judges had pronounced it legal. Some of the brightest names in Westminster Hall had given to it the support of professional opinion and the seal of judicial decision. At last a person at that time unknown, Granville Sharp, struck

by the injustice of Slavery, devoted himself to consider the grounds on which its legality was recognized. He studied the laws of England, and all the various evidences of its Constitution. In the course of these studies he was gratified to find that there was no *positive* establishment of African Slavery in England, and, indeed, that the words "Slave" and "Slavery" were nowhere to be found in the British Constitution. He next applied himself to the powerful array of well-known rules of interpretation, requiring, in case of doubt or question, that the interpretation should be on the side of Liberty, and especially that any man was "impious "and "cruel" who did not favor Liberty. Impiety and cruelty are not light burdens for an honest conscience. The conclusion was irresistible, that Slavery could not exist in England.

But the unanswerable argument of Granville Sharp was rejected at first by the bar, who regarded it as an attempted innovation. The direct precedents and the weight of authority were the other way, and this with most lawyers is enough. Harvey said that no person above "forty" accepted his discovery of the circulation of the blood. And Granville Sharp found himself in the same predicament. But this good man was not disheartened. He knew well that there was no statute of limitations against principles, and, better still, that principles must finally prevail over precedents. Principles are immortal, and bloom with perpetual youth: precedents are mortal, and die from age, decrepitude, and decay. Against principles precedents may for a while prevail; but the time comes when that which is mortal must yield to that which is immortal. In this conviction he persevered, until at last lawyers were convinced, and then the court pronounced in his favor.

The judgment of Lord Mansfield constitutes a landmark of law, to be remembered proudly, when all his contributions to commercial law and general jurisprudence are forgotten. It was a contribution to the British Constitution and to human rights. Like every principle of Natural Law, it approves itself at once to the reason and conscience. And this authority I now invoke in the interpretation of the Fugitive Clause.

I have already said too much. The argument on both sides is presented in the two reports of the Committee, or rather in the report of the Committee and the "views of the minority." Senators, I doubt not, have already made up their minds, which no discussion can change. Of course, some may vote against the acts on one ground and some on another. The arguments are numerous. It is enough, if on any ground they vote to remove this shame from our statute-book.

I do not enter into details of the constitutional argument, whether Congress has power under the Constitution to legislate on this subject, or whether it may confide this great trust to a single magistrate without trial by jury. These are grave questions, worthy of debate, into which I am ready to enter, if the occasion requires. But I forbear. Often, in other times, I have discussed these questions in the Senate and before the people; but the time for discussion is passed. And permit me to confess my gladness in this day. I was chosen to the Senate for the first time immediately after the passage of the infamous Act of 1850. If at that election I received from the people of Massachusetts any special charge, it was to use my best endeavors to secure the repeal of this atrocity. I began the

work in the first session that I was here. God grant that I may end it to-day!

Mr. President, one word more. The suggestion is too often made that this measure is not practical. Not practical! It is the favorite phrase. But this depends upon what Senators consider practical.

If it be practical to relieve the people from an unconstitutional and oppressive statute, — if it be practical to take away a badge of subjugation imposed by slave-masters during a brutal supremacy, — if it be practical to secure the good name of the Republic, still suffering immeasurably from this outrage, — if it be practical, at this moment of our own severe trial, to substitute justice for oppression, and thus secure the favor of Providence, — and, finally, if it be practical to strike at Slavery wherever we can hit it, and to relieve ourselves of all responsibility for this terrible wrong, — then is this measure eminently practical. It is as practical as justice, as practical as humanity, as practical as duty, which cannot be postponed.

But, independently of its intrinsic justice, this measure is recommended by an expediency of the highest character. I blush to plead in this way, but the occasion must be my apology. Senators are not aware how much our country suffers in the judgment of civilized nations from that accursed statute, which now for more than ten years has been a byword and hissing among men. Genius in some of its rarest creations has made it known, literature and art in every form have lent themselves to expose it, while the unutterable atrocities it has sanctioned have been carefully gathered together and circulated abroad as

testimony against republican institutions. Since the outbreak of the Rebellion this statute has been constantly adduced by our enemies abroad, as showing that we are no better than Jefferson Davis and his slavemonger crew; for Slavery never shows itself worse than in the slave-hunter. Only within a few days there has appeared at New York, published for the fair, a photograph copy of a letter of the late Alexander von Humboldt, containing the following words: "I have the warmest attachment to your beautiful and liberal city, New York, but have earnestly and deeply regretted that Webster, whom I long respected, more than favored that *shameful* law which still persecuted colored men after they had regained by flight their natural, inborn liberty, of which they had been robbed by Christians." Humboldt was our friend, but he could not forbear characterizing this statute as "shameful." Be assured, Sir, it is a burden for the national cause abroad which it ought not to bear. For the sake of our cause, and that it may have new strength in the swelling sympathies of the civilized world, it should be repealed at once, without hesitation.

I confess, Sir, another motive. At this moment of severe trial, I wish my country to put itself right with that Supreme Power which holds in its hands the destinies of nations. It is as true in the life of nations as in the life of individuals, that, if you would have equity, you must do equity; but the great equity which we must do is found in justice to an oppressed race. It is vain that you complain of disaster to your arms, of colored soldiers and their brave officers cruelly treated at Fort Wagner, of colored soldiers and their brave officers massacred at Fort Pillow, if yourselves

continue to set the example of injustice. The story of the Israelites is revived, and plague after plague is sent, sounding forever the old commandment, "Let my people go." If the plagues sent already are not enough, another and yet another will visit us. There is one assurance of obedience which you can give. It is to expunge from your statute-book all support of Slavery. Be in earnest here, and you will be practical. Then, having done equity, you may fearlessly ask for equity.

I have already said more than I intended. It was my purpose to leave the Senate without a word of argument or persuasion. The case to my mind is too clear, and I thought the time had come for votes. And now, as I conclude, I forbear to press all constitutional objections, and present the whole question on a single ground. Slavery has struck at the national life. Let us strike back wherever we can smite the great offender, and above all let us purify the statute-book, so that there shall be nothing there out of which this terrible wrong can derive support. In the discharge of this duty, all Fugitive Acts should be repealed. The argument against one is the same against all.

The amendment of Mr. Sherman was adopted, — Yeas 24, Nays 17.

Mr. Saulsbury moved an amendment of two sections concerning arrests without due process of law, — Yeas 9, Nays 27. Mr. Conness, of California, then said: "I do not wish to cast a vote for this measure in its present shape. I had intended, before the debate closed, if it was debated, to say something on the subject. I do not design that now; and as the Senate have seen fit to amend the bill, I cannot vote for it. At present, therefore, I move that it lie on the table." Mr. Sumner hoped the Senator would "withdraw that motion." Mr. Conness: "For what reason?" Mr. Sumner: "For the reason that we get something by this bill." The motion to lay on the table was lost,—Yeas 9, Nays 31. The Democrats, and Mr. Conness, voted in the affirmative.

April 20th, the Senate proceeded with the bill, when Mr. Foster, of Connecticut, made an elaborate speech, especially vindicating the Act of 1793, in the course of which he was frequently interrupted by Mr. Sumner in answer to points of the argument. He was followed by Mr. Gratz Brown, of Missouri, who concluded by saying: "I cannot support this bill as it has been amended. I cannot support any bill that recognizes as right and proper any Fugitive Slave Act; and I shall therefore refuse to give it my sanction, if it comes to a vote upon the final passage in its present shape."

April 21st, Mr. Van Winkle, of West Virginia, seized the opportunity to speak at length on the question of the war. Mr. Howard, of Michigan, moved an amendment at the end of the bill: —

"But no person found in any Territory of the United States, or in the District of Columbia, shall be deemed to have been held to labor or service, or to be a slave; nor shall he or she be removed under said Act of 1793; and the fourth section of said Act is hereby repealed."

Mr. Doolittle, of Wisconsin, moved an executive session. Mr. Sumner suggested that it should be an hour later. Mr. Brown thought the bill could not be finished that evening. Mr. Fessenden did not like to interfere with this bill, but he must give notice, that, if the bill were not disposed of that afternoon, or by one o'clock the next day, he must then move to go on with the Army Appropriation Bill. Mr. Sumner hoped "we might go on for at least another hour." Mr. Conness "did not understand the anxiety of his honorable friend from Massachusetts in pressing this bill in its present condition." Mr. Pomeroy hoped Mr. Sumner would let the bill go over; there were half a dozen amendments to be proposed. Mr. Sumner replied: "Very well; if the friends of the measure request that it shall not be pressed to-day, I will not throw myself in their way." Accordingly, on the motion of Mr. Conness, it was postponed to April 27th, and made the special order at one o'clock; but it was then superseded by the unfinished business of the day preceding, being the National Currency. With the amendment fastened upon his bill, keeping alive the Act of 1793, Mr. Sumner was not encouraged to press it, and he waited the action of the House of Representatives.

June 6th, in the House of Representatives, Mr. Morris, of New York, reported from the Committee on the Judiciary a bill in the following terms.

"An Act to repeal the Fugitive Slave Act of eighteen hundred and fifty, and all Acts and Parts of Acts for the Rendition of Fugitive Slaves.

"*Be it enacted by the Senate and House of Representatives in Congress assembled*, That sections three and four of an Act entitled 'An Act respecting

fugitives from justice and persons escaping from the service of their masters,' passed February twelve, seventeen hundred and ninety-three, and an Act entitled 'An Act to amend, and supplementary to, the Act entitled "An Act respecting fugitives from justice and persons escaping from the service of their masters," passed February twelve, seventeen hundred and ninety-three,' passed September, eighteen hundred and fifty, be, and the same are, hereby repealed."

After some skirmishing, the bill was ordered to be engrossed and read a third time. It was then vehemently denounced, and a series of motions was made to delay or stave off its passage. At last Mr. Morris allowed its postponement to June 13th, on which day, after further denunciation, it passed the House, — Yeas 90, Nays 62.

June 15th, the House bill was laid before the Senate, when Mr. Sumner said: "I am instructed by the Committee on Slavery and Freedmen to move the immediate passage of that bill. The Senate understands it; the House of Representatives has acted on it; there is no need of debate; and I ask to have it voted on at once." Mr. Hale, of New Hampshire, objected, as he wanted the morning hour for morning business. Mr. Powell, of Kentucky, moved its reference to the Committee on the Judiciary. Mr. Sumner wished it referred to the Committee on Slavery and Freedmen. The Senate refused to order the reference to the Committee on the Judiciary, — Yeas 14, Nays 21. Then, on motion of Mr. Sumner, it was referred to the other Committee. Mr. Sumner, anticipating such a reference, had already obtained from the Committee authority to report it promptly, without amendment, which he did at once, and asked for immediate action. Objection being made, the bill was not considered at that time.

June 21st, Mr. Sumner moved that the Senate proceed with the House bill, which, after earnest debate, was ordered, — Yeas 25, Nays 17. The Senate then took a recess till evening, when other business was considered, including the question of opening the street cars.

June 22d, Mr. Sumner moved to proceed with the House bill. Mr. Hale, of New Hampshire, opposed the motion, as he desired the Senate to take up some naval bills. The motion was lost, — Yeas 14, Nays 22. In the evening session, Mr. Sumner moved again to proceed with the House bill. Mr. Chandler said: "I will spend to-night with great pleasure with the Senator from Massachusetts on his bill; but to-morrow I shall demand the day for the Committee on Commerce." Mr. Saulsbury moved to adjourn, saying, "Let us have one day without the nigger." The motion was lost, — Yeas 8, Nays 28. Mr. Reverdy Johnson wished to secure an opportunity for Mr. Davis to speak, and he

was now absent. Mr. Sumner replied : "The Senator from Kentucky has had ample notice. He knew that this bill would be moved as soon as I could get the floor." Mr. Johnson insisted, when Mr. Sumner said : "The public business cannot wait. Again and again has this measure been postponed in deference to the Senator from Kentucky." The motion to proceed with the bill was adopted, — Yeas 26, Nays 12. Mr. Lane, of Indiana, then moved to proceed with executive business. Mr. Powell said : "You cannot get a vote to-night." Mr. Sumner : "Let us try." Mr. McDougall : "It is not possible to take a vote to-night." Mr. Howard and Mr. Wade : "We can get it by morning." Mr. McDougall : "It cannot be done." The motion for an executive session was lost, — Yeas 15, Nays 22. Mr. Saulsbury then moved that the bill be indefinitely postponed, and the question resulted, Yeas 11, Nays 25. Mr. Lane again moved an executive session, which motion was lost, — Yeas 16, Nays 22. Mr. Powell then moved that the bill be postponed until the first Monday of December next. Pending this motion, Mr. Riddle, of Delaware, moved an adjournment, which was lost, — Yeas 12, Nays 22. In the course of these dilatory motions, Mr. Sherman remarked that he was willing to give Mr. Davis an opportunity to be heard, and then said : "If Senators propose to resort to these parliamentary tactics, these interminable propositions for delay, merely to defeat a vote upon a bill which the majority have a right to pass, I am perfectly willing now to go into a contest of physical endurance." At last the bill was reported to the Senate without amendment, with the understanding that Mr. Davis should be heard upon it the next day, when Mr. Powell withdrew his motion, and, after the consideration of executive business, the Senate adjourned.

June 23d, Mr. Davis addressed the Senate at length. Mr. Saulsbury moved to strike out all after the enacting clause and insert the words of the Constitution concerning fugitives from service, with the addition : "And Congress shall pass all necessary and proper laws for the rendition of all such persons who shall so as aforesaid escape." The motion was lost, — Yeas 9, Nays 29. Mr. Johnson moved to amend the bill so as to keep alive the Act of 1793, saying : "The amendment, as the Senate will see, makes this bill like the one that we passed after debate." This motion was also lost, — Yeas 17, Nays 22. So the Senate reversed its former decision on that question. The bill was then passed by the vote, Yeas 27, Nays 12, and was approved by the President June 28th.

Here was the end of all Fugitive Slave Acts, and another blow at Slavery.

THE NATIONAL BANKS AND THE CURRENCY.

SPEECHES IN THE SENATE, ON AMENDMENTS TO THE BILL PROVIDING A NATIONAL CURRENCY, APRIL 27 AND MAY 5, 1864.

APRIL 26th, the Senate having under consideration the bill to provide a National Currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof, the Committee on Finance reported an amendment to strike out this clause, —

"And nothing in this Act shall be construed to prevent the taxation by States of the capital stock of banks organized under this Act, the same as the property of other moneyed corporations, for State or municipal purposes; but no State shall impose any tax upon such associations, or their capital, circulation, dividends, or business, at a higher rate of taxation than shall be imposed by such State upon the same amount of moneyed capital in the hands of individual citizens of such State: *Provided*, That no State tax shall be imposed on any part of the capital stock of such association invested in the bonds of the United States, deposited as security for its circulation," —

and insert instead thereof another clause, which, after providing for payments to the Treasurer of the United States "in lieu of all other taxes," further declared, —

"*Provided*, That nothing in this Act shall be construed to prevent the market value of the shares in any of the said associations, held by any person or body corporate, from being included in the valuation of the personal property of such person or corporation in the assessment of all taxes imposed by or under State authority for State or other purposes, but not at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State; and all the remedies provided by State laws for the collection of such taxes shall be applicable thereto: *Provided, also*, That nothing in this Act shall exempt the real estate of associations from either State, county, or municipal taxes, to the same extent, according to its value, as other real estate is taxed."

Mr. Sumner saw in the report of the Committee a deference to the State banks which he feared might imperil the national system, and

he made an effort to secure for the national banks the largest immunity, believing it important to the national credit.

Early in the debate he spoke,[1] and Mr. Fessenden replied to him. April 27th, Mr. Sumner spoke again.

MR. PRESIDENT, — This question seems to me very simple. The country is now engaged in mortal struggle to establish itself as a nation. It has gone forth to meet Rebellion organized in the name of State Rights. In preparing ourselves for this unparalleled contest, we are compelled to look about in every direction to increase our army, to enlarge our navy, and to multiply our financial resources; but at every stage we are encountered by objections in the name of State Rights. No single proposition is brought forward, having for object the salvation of the Republic by infusing new energy and new vitality, which is not encountered in the name of State Rights. And now, Sir, while considering how to secure financial stability, we are doomed again to encounter the oft-repeated objection. The Rebellion began in State Rights, and all opposition to the measures conceived to crush it is in the name of State Rights. It is hard that we should be obliged to meet State Rights not only on the battle-field, but also in this Chamber.

The Senator from Vermont [Mr. COLLAMER] complained that it was proposed to sequester so large an amount of property from State taxation. The sum-total of property thus sequestered is $300,000,000[2]; but has the Senator considered how much is sequestered by other agencies to save this Republic? There is the army with all the

[1] Congressional Globe, 38th Cong. 1st Sess., p. 1873, April 26, 1864.

[2] Act to provide a National Currency, February 25, 1863, Sec. 17: Statutes at Large, Vol. XII. p. 669.

material of war, there is the navy with all the material of the navy,—all sequestered. Who complains that this vast material, now counted far beyond $300,000,000, is sequestered from State taxation? Does any Senator, in the name of State Rights, claim that the enlarged navy of the Republic, as it floats into a Northern port, shall be brought within the sphere of local taxation, whether State or municipal? Does any Senator say that all the vast material of war, ammunition, cannon, and the like, deposited, for the time being, in any particular locality, shall fall within the sphere of State or municipal taxation? Or does any Senator insist that the public securities shall be left exposed to State taxation? No Senator makes any such complaint. But the complaint is reserved for the present occasion, when it is proposed to create a new agency for the currency of the country.

I know not how the exemption can be sanctioned in one case and not in the other. The reason applicable to one is applicable to the other. It is said that the army and navy are for war, and naturally share exemptions incident to war and its preparations. But it would be difficult to say, that, in this crisis, what you do for the finances is not essentially a war measure, entitled to all the consideration accorded to such measures in a moment of war. What are your army and navy without a Treasury? Milton, in one of his sublimest sonnets, has aptly pictured that statesmanship which was able

> "to advise how War may, best upheld,
> Move by her two main nerves, iron and gold,
> In all her equipage."[1]

In these few words the very likeness is given. All who hear them will confess their truth.

[1] Sonnet XVII.: To Sir Henry Vane the Younger.

Now, Sir, no Senator complains because we protect the nerve of iron; but the Senator from Vermont registers complaints because it is proposed to protect the much more delicate nerve of gold. What is worth doing is worth well doing; and if it be worth while to organize the finances of this Republic by the proposed banking system, it is worth while to do it well; and can you do it well, if, at the very moment of its organization, you leave its most sensitive part exposed to hostile influence?

The precedent for this exemption is complete. Already you exempt the public stocks and securities from local taxation. Pray, Sir, tell me what policy justifies such exemption which is not equally strong for the exemption of shares in the national banks. Clearly, it was to commend your national stocks that you established the exemption; and for the same reason I ask you now to establish this other exemption. It is strange that the vast sequestration of the national stocks from State taxation should have been made with so little doubt, when Senators question so pertinaciously this smaller sequestration. If it was proper in one case, it is in the other. If it was necessary in one case, it is in the other.

If you allow the State to interfere with the proposed system by taxation in any way, may they not embarrass it? Where shall they stop? Where will you run a line? Undoubtedly, according to the Supreme Court, they cannot tax the bank directly. This would be unconstitutional. But it is said that they may tax the shares. Now I raise no constitutional question. It may be that a tax on shares is constitutional. But I shall not consider it on this ground. I am now arguing

against the policy of such tax. It is a question of expediency which I raise, for the sake of the system we are about to establish. But here the rule seems clear. Every consideration urged against taxing the bank directly may be urged against taxing the shares. If it be bad policy in one case, it must be in the other.

I suppose there is no judgment of our Supreme Court which has been more admired than that in the case of *M'Culloch* v. *The State of Maryland*.[1] It was pronounced by Chief Justice Marshall, and is as good a specimen of that "pure reason" which belonged to this magistrate as any that can be named. In the course of this elaborate judgment all the topics were considered which enter so peculiarly into this debate. It was there insisted that the tax was unconstitutional. But the words of the Chief Justice seem intended for the present occasion. His object, from beginning to end, was to keep the bank safe from the hostile acts of the States. It was a great effort to uphold a national institution against State Rights. It was, permit me to say, an answer in advance to the Senator from Vermont. I do not like to trouble the Senate, but there are passages so pertinent that I will read them. Here, for instance, the Chief Justice considers the ground of exemption.

Mr. Sumner then proceeded at some length to analyze the judgment of Chief Justice Marshall, reading important parts of it; and he then said: —

Now, Sir, every consideration, every argument, which goes to sustain this great judgment, may be employed against the proposed concession to the States of the power to tax this national institution in any particular, whether directly or indirectly. The reason of the judg-

[1] 4 Wheaton, R., 316.

ment is as strong against an indirect tax as against a direct tax.

After showing the character of the new system as an instrument of national credit, as the Navy-Yard and the Mint are instruments for the public service, he proceeded : —

The very measure under consideration seeks to create a new currency by a system of national banks which shall supersede the existing State banks as agents of currency. Of course the new system must begin in rivalry with the State banks, which in many cases will be hostile. This is no inconsiderable impediment. But this impediment will be increased, if the national banks be exposed to local taxation. It is an untried experiment upon which you are entering. On every account it should be made under the most favorable circumstances, — precisely as when we put stock in the market. The national banks should be commended in every possible way. But, instead, it is proposed to fasten upon them a liability, which, if it do not cause people to avoid them, will at least keep them in rivalry with the State banks, so that the new system cannot become truly effective. It seems to me that there is but one practical course. Naturally, all who are against the proposed system will favor any limitation or burden to impair its efficiency. But all who are for the system, and wish to see it doing all the good it can, will take care that it is not compelled to carry weight. The whole case may be briefly summed up. Would you place the national credit on a sure foundation? Are you for the national banks as a proper agency to this end? If these two objects interest you, then, I say, do not allow them to be sacrificed in subserviency to State Rights.

Mr. Fessenden followed in an earnest speech, vindicating the report of the Committee, to which Mr. Sumner replied.[1] The debate continued for several days.

May 5th, as a substitute for the amendment of the Committee, Mr. Sumner moved the following : —

"In lieu of all other taxes on the capital, circulation, deposits, shares, and other property, every association shall pay to the Treasurer of the United States, in the months of January and July, a duty of one per cent each half-year from and after the first day of January, 1864, upon the average amount of its notes in circulation, and a duty of one half of one per cent each half-year upon the average amount of its deposits, and a duty of one half of one per cent each half-year, as aforesaid, on the average amount of its capital stock beyond the amount invested in United States bonds; and in case of default in the payment thereof by any association, the duties aforesaid may be collected in the manner provided for the collection of United States duties of other corporations, or the Treasurer may reserve the amount of such duties out of the interest as it may become due on the bonds deposited with him by such defaulting association. And each association shall, within ten days from the first days of January and July of each year, make a return, under the oath of its president or cashier, to the Treasurer of the United States, in such form as he may prescribe, of the average amount of its notes in circulation, and of the average amount of its deposits, and of the average amount of its capital stock beyond the amount invested in United States bonds, for the six months next preceding the first days of January and July, as aforesaid; and in default of such return, and for each default thereof, each defaulting association shall forfeit and pay to the United States the sum of two hundred dollars, to be collected either out of the interest as it may become due to such association on the bonds deposited with the Treasurer, or, at his option, in the manner in which penalties are to be collected of other corporations under the laws of the United States; and in case of such default, the amount of the duties to be paid by such association shall be assessed upon the amount of notes delivered to such association by the Comptroller of the Currency, and upon the highest amount of its deposits and capital stock, to be ascertained in such other manner as the Treasurer may deem best. *Provided*, That nothing in this Act shall exempt the real estate of associations from either State, county, or municipal taxes, to the same extent, according to its value, as other real estate is taxed: *Provided, also*, That all taxes imposed by this or any future Act on banking associations organized under national legislation shall be applied exclusively to the payment of the interest and principal of the national debt of the United States."

It will be perceived that the special object of this amendment was

[1] Congressional Globe, 38th Cong. 1st Sess., pp. 1896, 1897, April 27, 1864. See also, pp. 1900, 1955, 1956.

to keep the taxation of the national banks in the hands of the National Government. In this aim Mr. Sumner was sustained by Mr. Chase, the Secretary of the Treasury, who, in a communication to the Chairman of the Senate Committee of Finance, May 9, 1864, said: —

"Under ordinary circumstances there might be no insuperable objection to leaving the property organized under the national banking law subject, as are almost all descriptions of property, to general taxation, State, national, and municipal; but, in the present condition of the country, I respectfully submit that this particular description of property should be placed in the same category with imported goods before entry into general consumption, and be subjected to exclusive national taxation."

Mr. Sumner spoke in the same vein.

Mr. President, — At last, in this discussion, it is clear that we have come to the place where the road branches in two opposite directions: one toward the support of the whole country, and of that improved currency essential not only to the general welfare, but also to the common defence; and the other toward State rights, State taxation, and State banks. Which road will you take, Sir?

Or, stating the case in a different way, it is a question between the national credit, involving the interests of all, on the one side, and certain local pretensions on the other side. It is a question between the whole and a part, — between the life of the Republic and a small percentage of taxation which Senators claim for their States. The enemy is at our gates, — gold is at 180, — and yet Senators hesitate.

All are watching, at this moment, the movement of our forces under General Grant, and are longing for victory. Nothing that the country can do to make him strong is left undone. Men, money, supplies, everything is lavished; and only the day before yesterday the Senate voted another $ 25,000,000.

There is another field, where the battle is bloodless, but scarcely less important: I mean the field of finance. If our pecuniary resources fail, it is doubtful if the army and navy must not fail also. But victory on this field would give triumphant strength and vigor to all the operations of Government. There is no argument for the army and navy — ay, Sir, for the present support of the Lieutenant-General of the United States, in the field at the head of our military forces — which at this moment is not equally applicable to the support of the Secretary of the Treasury at the head of our *financial forces.*

How different the treatment of these two officers! Everything is given to the one, almost without debate; but little is given to the other without higgling at every stage.

There are movements pending in the field of national finance hardly less important than those in the field of war. A defeat in finance would be little less disastrous than a defeat in war.

Under these circumstances, and at this critical moment, a measure is brought forward whose real character is discerned in its title: "*To provide a national currency* secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof." The primary object of this bill is not, therefore, to establish national banks, but to secure the national currency. For the sake of the currency a system of national banks is to be established; they are the means to the end. But the end sought is an improved currency. Sir, this must not be forgotten. If it were a mere question of a national bank, if it were a question between two rival systems, Senators might take sides. But who will hesi-

tate to give all that is needed, even all that is asked by the proper authorities, for an improved currency? You may seem to give much, when you abandon sources of State taxation; but you can give nothing that will not be returned tenfold, a hundred-fold, when the currency at last becomes fixed and uniform.

Glance only for a moment at the incalculable advantages of a sound currency. Gold will assume its normal place, business will be sure, values will be fixed, fluctuations will cease, inflated prices will pass away. There is not a mart of commerce, there is not a village in the whole country, that will not feel the change. But this great boon cannot be assured without corresponding effort. Like victory in the field of battle, it must be fought for and paid for.

And now, when victory seems within reach, when an improved currency is already begun, Senators hesitate in conceding those facilities without which victory is doubtful. They set up claims for their States, and insist upon certain rights of taxation. If this were a season of peace, I could appreciate the pretension; but when I consider the peril of the country, filling us all with such anxiety, — when I consider that its very being is assailed, and that it is to be defended on the field of finance just as much as on the field of battle, — I feel that every endeavor to hamper the pending measure differs little in character from an effort to hamper our soldiers in the field. We spare nothing essential to our armies; we should spare nothing essential to our currency. Men and money both are necessary; both must be cherished and protected with equal patriotic care.

. . . . .

Sir, I am unwilling to be misunderstood. I have no feeling except of kindness for the State banks, especially when they keep within the proper sphere of banks, and do not undertake to supply a currency for the country. But at this moment, when we are seeking to create a new currency, which shall be the foundation of national credit, and of national character too, I confess that I have little sympathy with anything that puts itself in the way. The State banks have performed their task as agents of currency, and the time has come for them to abdicate, — or, if they do not abdicate, at least to conform to the new system.

I do not stop to inquire if any paper issued by State banks as currency can be constitutional, — to consider if the States, which cannot coin money, can yet put paper in circulation as money. I content myself with insisting, that, whatever the constitutional merits of this question, it is no longer expedient that States should be invested with the power. We must have another system. The best interests of the whole country require it, especially at this time of national peril.

It is clear that the State banks are not competent to meet the crisis. They cannot do the business required. Besides, they are in the way. Putting their notes in circulation almost at will, the currency is inflated beyond control. Depreciation naturally ensues. Bankruptcy may follow.

When I say that the State banks are in the way, I do not use too strong language. Authentic tables show the extent to which during the last year the currency has been affected by their interference. I hold in my hand a statement from the Bank Reports for 1862, page 208, and for 1863, page 210. At the risk of wearying the Senate, I will read it.

Statement of the Circulation of the Banks in certain States, on or about 1st January, 1862 and 1863.

	1862.	1863.
Maine	$4,047,780	$6,488,478
New Hampshire	2,994,408	4,192,034
Vermont	2,522,687	5,621,851
Massachusetts	19,517,306	28,957,630
Rhode Island	3,306,530	6,413,404
Connecticut	6,918,018	13,842,758
	$39,306,729	65,516,155
		39,306,729
Total increase in New England States		$26,209,426

Being over sixty-six and two thirds per cent.

Similarly in New York, Pennsylvania, and New Jersey, we find the circulation, on or about 1st January : —

	1862.	1863.
New York	$30,553,020	$39,182,819
Pennsylvania	16,384,643	27,689,504
New Jersey	3,927,535	8,172,398
	$50,865,198	$75,044,721
		50,865,198
Total increase in New York, Pennsylvania, and New Jersey,		$24,179,523

Being over forty-seven per cent.

Aggregate Increase in the Principal Eastern States.

	1862.	1863.
New England	$39,306,729	$65,516,155
New York, Pennsylvania, and New Jersey	50,865,198	75,044,721
	$90,171,927	$140,560,876
		90,171,927
Aggregate increase in Eastern States		$ 50,388,949

Being over fifty-five and three fourths per cent.

These tables speak. They show the range within which the State banks undertake to operate, and their consequent interference with the national system. If it be said that in certain parts of the country, as in New England and New York, the State banks have performed good service, I reply, that, even admitting all that is claimed, the service is local and incomplete. It does not embrace the West.

The present endeavor is to provide a remedy for this trouble by a comprehensive national system, discharging the function performed by the State banks, and embracing the whole country. It is called national because it belongs to the nation, and not to any particular State, and because its origin, aim, and inspiration are all national. It is conceived in no hostility or unkindness to the State banks, but in a patriotic purpose to do what can be done to secure what all desire, — a national currency. The State banks will be welcome to a place in the system, like State troops coming forward for the defence of the Republic ; but they cannot be tolerated, if they stand aloof, or refuse to take the post assigned them. At a moment of peril, when the Government is bending all its energies to save the national currency, a mutiny among State banks will be hardly less disastrous than a mutiny among State troops. Every murmur or mutter of such mutiny ought to be repressed at once. All should be summoned to perfect and harmonious coöperation in that cause which embraces the whole country, in every walk of life, whether military or civil.

I know not how others are impressed, but to my mind it is difficult to imagine anything, short of those everlasting principles of human freedom involved in

this war, which should at this moment be more carefully watched than the currency of the country. Let this be safe, and everything will be safe, — army, navy, and the whole national cause. Such a currency will constitute an epoch in the history of the country, — ay, Sir, in the history of the world. There have been ministers in other countries and other times whose names are immortal from association with commercial reforms. Colbert was the founder of the commercial system of France; Peel was the founder of free trade in England. But the present Secretary of the Treasury, when the new system is at last triumphant over all obstacles, including the mutiny of State banks and the lukewarmness of Senators, may boast that he has given a currency to his country. Next after the great gift of human freedom there is nothing greater he could give, — nothing that comes home so completely to the business and bosoms of the people, rich and poor, throughout our wide-spread empire. An improved currency is like sunshine, penetrating every corner of the land, under which commerce, business, comfort, civilization, life itself, will put forth blossom and fruit. Nobody in the community too high, nobody too low, not to feel the new-found boon filling every household and travelling on every highway. But it is seen now in another aspect. An improved currency is like a new levy of national troops, a new navy afloat, a new contribution of supplies. It is the herald and assurance of untold success. In itself it is a present daily victory, — fruitful parent of victory everywhere.

Such is the object proposed, — important at any time, inconceivably important at this moment. And the question recurs, Are you for a national, life-giving

currency, or are you for the State banks? You cannot be for both; one must yield to the other. If you are for the former, you must abandon the State banks, or compel them to enlist in the national cause.

Massachusetts — which has a larger bank capital in proportion to her population than any other State, and, moreover, looks to taxation of this capital as a chief source of income — has already, by her patriotic Governor, volunteered support to the national banks.

Here Mr. Sumner quoted from the Address of Governor Andrew to the Legislature of Massachusetts, January 9, 1863.

Such is the testimony of Massachusetts, by the lips of her brave Chief Magistrate. Seeing the object before us, he raises no question of State rights, presents no claim of State taxation, makes no plea for State banks.

Sir, it is vain to think that you can keep both systems at the same time. One must yield to the other. But if you sincerely desire the national system to prevail, then must you so endow and protect it that it will be commended to the public, and that investments will naturally seek it. Therefore every privilege you confer, every immunity you give, every exemption you establish in its favor, must naturally contribute to its strength, and make it more effective for its transcendent purposes.

This is the day of sacrifice. Families are offering sons and brothers. States are giving their citizens, and every citizen is contributing according to his means to the safety of the Republic. But there is one other sacrifice now required: it is the sacrifice of the State banks as agents of currency; and this sacrifice requires

that the local taxation should be suspended with regard to the national currency, and that all the proceeds of such local taxation should be passed to the credit of the whole country. You must do for the national currency precisely what you do for the national securities. Here are the words of the statute : —

"And all stock, bonds, and other securities of the United States, held by individuals, corporations, or associations, within the United States, *shall be exempt from taxation by or under State authority.*"[1]

The reason which sustains the exemption in this case is equally applicable in the other.

But we have other exemptions from local taxation.

There are the imports of the country, which no State or municipality can tax.

There are the army and navy, and all the material of war, — ships, arms, munitions, commissariat supplies, — all exempt from local taxation.

There are the public lands of the United States, which no local authority can touch.

There is the Mint, which is untaxed.

There are the public buildings in Washington, the National Capitol, the Executive Mansion, the offices of the heads of Departments, covering large spaces of ground, all secured from local taxation.

But no reason can be assigned for exemption in these cases that does not prevail with regard to the currency. Nay, at this juncture, when our object is, above all things, to secure a national currency, the reason for exemption is of special and unanswerable force.

[1] Act to authorize the Issue of United States Notes, Sec. 2, February 25, 1862 : Statutes at Large, Vol. XII. p. 346.

We have more than once been warned not to slay the goose that lays the golden egg, — meaning by this goose the State banks. But all who use this illustration forget that there is another bird, which lays such eggs as no State banks can hatch, — eggs not merely of gold, but of victory. It is the *national credit*, which Senators seem willing to abandon, if not to slay; and it is the national credit which I now insist shall be preserved at all hazards.

Mr. President, I was not a sharer in the counsels that originated this measure. Had I been consulted, I know not that I should have originally advised the experiment in its actual form. Clearly, something was necessary for the sake of the currency, and for the sake of the country; and after proper consideration the present system was adopted. Operations under it have already commenced; $60,000,000 of capital have been organized according to its requirements. It is too late to retreat. It only remains that you should go forward, not sluggishly, heavily, reluctantly, but bravely, confidently. The financial enterprise already begun must be finished and protected. Here I cannot hesitate. If the system is to be maintained, if it is not to be utterly abandoned, it must be placed under the most favorable auspices, so at least that it may not fail from any want of care on our part. It should be made strong in itself, and then it should be surrounded with an atmosphere congenial and friendly. For this reason I shall vote to keep it free from all State hostility and even State rivalry, that it may become in reality, as in name, wholly national.

Sir, I am told that it will be unpopular to make this sacrifice, and ancient ghosts are paraded through this

Chamber to frighten us from duty. Naturally, all who are against the proposed system will be against the seeming sacrifice. But the people are too intelligent not to see what is demanded by the best interests of the national currency; and unless I greatly err, they will insist that what we do shall be so done as to make our work most effective and most triumphant, to the end that victory may be certain. It is on no narrow ground that I make my appeal. I speak for a national currency which shall be to the whole country like the horn of abundance; and I plead for it now, as essential not only to the general welfare, but also to the common defence.

Mr. Fessenden replied to Mr. Sumner with severity. On the other hand, Mr. Chandler, of Michigan, recognized as a business man, said: "The country owes the Senator from Massachusetts a debt of gratitude for his patriotism and statesmanship. He has risen above small matters, above local, petty interests, and has come up to the standard of the broadest statesmanship, in the argument he has just delivered, which is one of the ablest financial arguments ever delivered on this floor."

Mr. Sumner's amendment was lost, — Yeas 11, Nays 24. The amendment of the Committee was then agreed to, — Yeas 29, Nays 8.

BRANCH MINTS AND COINAGE.

SPEECH IN THE SENATE, ON THE PROPOSITION TO CREATE A BRANCH MINT IN OREGON, APRIL 29, 1864.

THE Senate having under consideration a bill to establish Assay Offices at Carson City, in the Territory of Nevada, and Dalles City, in the State of Oregon, Mr. Nesmith, of Oregon, moved to strike out the section establishing an Assay Office at Dalles City, and insert several sections establishing a Branch Mint there, instead. This was contrary to the recommendation of the Finance Committee, and also to communications from Mr. Pollock, the Director of the Mint at Philadelphia, and Mr. Chase, Secretary of the Treasury, sustained by Mr. Fessenden in the Senate.

April 29th, Mr. Sumner spoke.

MR. PRESIDENT, — When this subject was under consideration before, I voted with the Committee, partly because it is my habit to vote with committees on matters within their special consideration, and partly because at the time I was under the impression that their report was justified by correct principles. Subsequent reflection has induced me to hesitate in this conclusion.

Much dependence has been placed upon the report of the Director of the mint at Philadelphia. Now, Sir, if he had contented himself with giving an opinion against establishing a mint in Oregon, without assigning reasons, I might have respected his opinion; but when he puts forward as his first great objection that the multi-

plication of mints will tend to "national disintegration," I confess that I join with the Senator from Oregon [Mr. NESMITH] in distrusting his conclusion. What confidence can anybody have in anything founded on such premises, which experience, if not reason, shows to be false? Why, Sir, the author of this opinion forgets that in the country most centralized in the world, where all the agencies of Government converge in a single capital, — I mean France, — there have been for a long time, even within its comparatively contracted borders, more than half a dozen different mints. Besides a magnificent central mint at Paris, there are, or were very recently, auxiliary mints at Lyons, Marseilles, Bordeaux, Lille, Rouen, and Strasbourg. I never heard that this multiplicity tended toward "national disintegration." France still continues one and indivisible; and I doubt if there would be any difference in this respect, even if there were a mint in every one of her eighty-six Departments. Really, the Director of the Philadelphia mint ought to have borne in mind the famous instructions of Lord Mansfield to the colonial magistrate, and contented himself with an opinion without assigning reasons.

There is a different consideration, to which I confess that I am not insensible. It is the importance of a correct and finished coinage, which it seems natural to suppose best promoted by a single mint. On this point I am disposed to agree with the Director. But our Government has not acted on this principle.

If circumstances favored the consolidation of the national coinage at a single mint, I can conceive that there would be advantages of an unquestionable character. Indeed, if we repair to France, where the mints have been in times past so numerous, we find that these

advantages have not been denied. I suppose that the most authoritative testimony on this subject, whether we look at it in the light of theory or of practice, is found in that country; and if we seek special authorities, there is nothing so instructive or ample as the report of Dumas and De Colmont, made in 1839, under a commission from the French Minister of Finance. This document, with its minute disclosures on the operations of mints, was for some time kept secret in France. I have understood that only *twelve copies* were printed for the use of the Commission, who were placed under a solemn obligation not to divulge it. But I believe it found its way to publicity at the time of the Parliamentary inquiry into the Mint in 1849, which resulted in a valuable blue-book.

The testimony of Dumas is for a single mint. He dwells especially on two considerations,— economy, and the perfection of the coinage; and these he places above local interests demanding multiplicity of mints. The figures by which he illustrates the superior economy are very striking. *These assume that the metal is already delivered at the mint,* — a point not to be forgotten on the present occasion. Beyond his own opinion on the question of perfection, Dumas quotes the testimony of Basterrèche, Regent of the Bank of France, who, after an examination of the subject as long ago as 1800, very positively declared that "the perfection of labor which ought to distinguish a great nation imperiously required a single mint, placed under the immediate superintendence of the Government." And he also quotes the testimony of Humann, Minister of Finance, who, in presenting his budget in 1835, declared that the Paris mint was adequate to do all the coinage required in

France, — that the concentration of labor there would promote improvement in the processes of production, — that in this way the Government would be relieved from the expense of different establishments, — that all the money from the same mint would be identical in character, and in proportion as it acquired perfection would be less exposed to counterfeiting, — and, in fine, that the superintendence of the Government would be a guaranty of security, which does not exist where the work is distributed in a large number of establishments. Such was the testimony of the minister, adopted by the illustrious authority in science, Dumas. Perhaps the case could not be stated stronger. Yet it did not prevail in 1800, when it was first given, — nor in 1835, nor in 1839, — even in France, where the tendency to concentration is so active, where the facilities for it are so great, and the disposition to take counsel of science is so confirmed. And surely there must be a reason why it did not prevail.

Dumas says, in rather contemptuous phrase, that "on one side is a petty local interest, in a great degree imaginary."[1] But if this "petty local interest" were of sufficient importance to prevail for so long a time in France, against such influences, it must be because there was something of intrinsic strength in its character. I allude thus minutely to this testimony, because I would not keep anything out of the discussion calculated to shed light, and because it seems to me that the long-continued practice of France, in spite of such testimony, must not be disregarded in our endeavors to arrive at a true policy.

Thus far our Government has followed the teachings

[1] Rapport, p. 70.

from the practice of France, rather than from its science on this subject. It renounced, some time ago, the policy of a single mint, acting, it may be supposed, under other considerations of a controlling character. The statute of March 3, 1835, entitled "An Act to establish branches of the Mint of the United States,"[1] provides for mints at New Orleans, Charlotte, in North Carolina, and Dahlonega, in Georgia, — the two latter for coinage of gold only. Since then there has been provision for mints at San Francisco, Denver, and Carson City.

I have not before me the most recent statement of the production at these different mints; but this is not necessary for illustration. If we take the year 1851, we find that the number of pieces, gold, silver, and copper, produced that year, was as follows: —

Philadelphia	24,985,736
New Orleans	3,527,000
Charlotte	105,366
Dahlonega	83,856

So that mints were kept up at the two latter places merely to manufacture a very small amount of coin, and the reason assigned was, that gold was produced in the neighborhood.

Looking at the cost of production at these different places, we find that at Philadelphia it was only forty-two hundredths per cent, — at New Orleans, one and eight hundredths per cent, — at Charlotte, three and fifty-five hundredths per cent, — at Dahlonega, three and thirteen hundredths per cent. But, great as was the economy at Philadelphia, compared with that at

[1] Statutes at Large, Vol. IV. p. 774.

the other mints, we find that at the Paris mint the same production costs one half less.

If we look further at the mints of Charlotte and Dahlonega, it is easy to see how every consideration of economy was against them. With a single Munich press in the mint at Charlotte, the whole annual coinage there would have been accomplished in thirty-five hours; and with a similar press at Dahlonega, the whole annual coinage there would have been accomplished in less than twenty-eight hours! Experience shows that one Munich press will coin in a day of ten hours, allowing one sixth of the time for stoppages and accidents, thirty thousand pieces. Of course the coinage at these two places must have been at an expense much beyond that of Philadelphia. It would be more economical for the Treasury to pay the cost of transporting the gold from these places to Philadelphia. And doubtless this would be done, if the question of economy were alone involved.

I refer to these instances as illustrations of the policy already adopted. I need not say that they do not commend themselves to my judgment, especially when it is considered that in all probability the coinage at these mints, besides being expensive, was also of an inferior quality.

But the vast products of gold in distant California presented the question in a new form. Unexpectedly, the early prodigies of Mexico and Peru were renewed. Private persons were suddenly enriched. Gold was turned up like clods of earth, or washed from sands deposited by mountain torrents. Where gold so abounded, the currency of the country was naturally in this metal, which thus performed its double function of

merchandise and money. Should all this treasure be sent far away to Philadelphia for coinage? The answer of reason, convenience, and commerce was clearly against such enforced transportation. A mint became a necessity. Even assuming that the coinage could be executed with more economy and perfection at Philadelphia, it is evident that the local interests of California were too important to be neglected. The mint was established, and during the last year gold has been coined there to the amount of $17,510,960, while the smaller amount of $3,340,931 was the sum-total of gold coinage during the same time at Philadelphia.

It is now proposed to create another mint in Oregon, and the reasons for it are similar to those which prevailed in the case of California. The region is fruitful in gold, if not to the same extent as California, yet so much so as to require similar facilities for coinage. It seems that the amount received at three private assay-offices in the city of Portland, from January 15th to October 20th of the last year, reached $2,486,496. Compare this sum with the paltry yield at Charlotte or Dahlonega, where mints were established and maintained down to the Rebellion. The mines of Peru have been proverbial for richness; but the sum-total of their product in 1858 was only $6,000,000. That of Chile was $5,000,000; and that of Bolivia was only $2,000,000,— being less than the product of Oregon for nine months.

Here, again, the considerations of science, so strong in favor of a single mint, seem to lose their applicability, or rather they fail in presence of other considerations not to be neglected. Sir, we cannot forget in legislation that it is no narrow territory that comes within

our jurisdiction, but that it is a vast region, washed by two great oceans and separated by intervening mountains. A rule which may be proper in a country like France becomes inapplicable to a country so vast in space. If all our States were huddled together on a single seaboard, perhaps a single mint might suffice. In such a case economy and perfection of coinage might be exclusively consulted. But the interests of business on the Pacific coast must not be sacrificed even to these considerations. Spain still has mints at Madrid and Seville, although at the latter place the coinage is chiefly confined to copper; but in former days, while Mexico was a Spanish province, there was a Spanish mint there, — for the same reason, I suppose, that a mint is now proposed in Oregon.

The consideration from distance alone cannot be disregarded. Oregon is more than five thousand miles from Philadelphia, and seven hundred miles from San Francisco. It is impossible to legislate for such immense spaces as you would legislate for a European kingdom, where every part is within easy distance of the metropolis.

In England a single mint transacts the business of that commercial country. But I need not remind you that all its immense commerce is conducted within a small territory. In Holland, also, there is only a single mint, — although during the days of the Republic there was a mint in each province. Afterwards these were abandoned, and one mint for the whole kingdom was established at Utrecht. But here again I remind you of the narrow space of territory served by this mint.

The whole question is obscured by considering gold, when coined, as exclusively currency, whereas it is also

merchandise. In this latter character it comes under the laws governing commerce in other articles. If we go back to Aristotle, we find a definition difficult to improve in our day. "It is agreed," says this master of thought, "to give and receive in exchange *a substance which, useful in itself,* is easily managed in the usage of life: as, for example, iron, silver, or such other substance as shall have a determined dimension and weight, and which, in order to avoid the embarrassment of continual weighing, *shall be marked by a particular stamp as the sign of its value.*"[1] In quoting these words, Michel Chevalier, the political economist and new-made Senator of France, who has given much attention to this subject, rightly says that the whole question is admirably put and at the same time determined.[2] But the same idea has been presented by Adam Smith in his remarkable work on the Wealth of Nations. "The qualities," he says, "of utility, beauty, and scarcity are the original foundation of the high price of those metals, or of the great quantity of other goods for which they can everywhere be exchanged. *This value was antecedent to and independent of their being employed as coin, and was the quality which fitted them for that employment.*"[3] Therefore it must not be forgotten that coin is something more than money; it is merchandise also. In this character it plays a conspicuous part in the commerce of the world. It differs in bulk from the lumber of Maine, but it is just as much an article of merchandise.

Regarding gold as merchandise, we see how clearly

[1] Politics, Book I. ch. 9.

[2] De la Baisse probable de l'Or, Sec. II. ch. 1.

[3] Wealth of Nations, Book I. Ch. 11, Part 2, (London, 1802,) Vol. I. p. 269.

in certain places and under certain circumstances it escapes from the scientific laws applicable especially to coinage. Gold is unique among articles of commerce. Every other article allows discussion as to its quality. Cloth or wool may be more or less fine; flour more or less bolted, or it may be made from hard or soft wheat. But gold is chemically a simple body, and, when once refined, perfectly homogeneous, whether from California or Siberia, from the sands of Transylvania or the poorer sands of the Upper Rhine. Let it be once brought to any arbitrary standard, as, say, nine tenths, and there is no difference in its character. But this degree of fineness must be established *in authentic manner*, — otherwise transactions in this article may be arrested at every moment. The delicate agencies necessary for determining its value are not easily accessible. The Government, therefore, as representative of the community, after refining and weighing gold, puts upon it a stamp which guaranties its weight and fineness. Thus, the eagle, with the stamp of ten dollars, is a piece which, according to the Act of Congress of 18th January, 1837,[1] weighs two hundred and fifty-eight grains, with nine tenths of gold and one tenth of alloy. The English sovereign is a stamped piece of gold twenty-two carats fine, and of such weight in proportion to the troy ounce that £ 3 17 *s.* 10½ *d.* make an ounce. The French franc is a stamped piece of silver weighing exactly five grammes, and nine tenths fine.

But in our country, and now especially in California and on the Pacific coast, gold has become a principal article of production and exportation, like wheat or cot-

[1] Statutes at Large, Vol. V. pp. 137, 138.

ton. Such is its character that it instinctively seeks *inspection*, in order to secure a guaranty and recommendation. Now every State has its inspectors, for instance, of flour, pot and pearl ashes, fish, beef, and pork. In Massachusetts there are inspectors of sole-leather, although a hide of leather is open on all sides. But, if gold be regarded as merchandise, there is more reason for its inspection. As it is more portable than these other articles, so it is also more valuable, more easily lost, more easily stolen, and more provocative to plunder. Therefore it is entitled to peculiar safeguards.

Here, then, is the case in a nutshell. California is already a large exporter of gold as merchandise. Oregon is now commencing a similar career. But the gold there ought to have every advantage as merchandise which it can derive from the inspection of the Government. Call it protection, if you will; but I beg to submit that an interest so important, so peculiar, and so delicate, deserves this protection.

If it be said that all this may be accomplished by an assay office, I reply, that this does only partially what is accomplished by the mint. The gold is delivered back in ingots stamped, so that for certain purposes it is merchandise; but the work is only half done. If the quantity were trivial, as at Charlotte and Dahlonega, then an assay office would suffice; but where the supply is so great as in California or Oregon, it would seem as if no pains ought to be spared by the Government to facilitate the commerce in this article, or to meet the desires of its producers. Now it is obvious that nothing in this respect can equal the stamp upon the national coin. A courtier said to Philip the Second of Spain, "Your golden ducats carry your

name and your features over all the countries of Europe, exciting envy and dread." The time for envy and dread has passed; but our eagles are not idle. There is their inscription, *E pluribus unum*, an unquestionable stamp of nationality and value, which they carry wherever they go.

Therefore, Sir, while admitting, that, for the sake of the coin, there should be the highest accuracy possible in the operations of the mint, I cannot hesitate to insist, that, regarding gold as merchandise, the mint must be established in such localities as may be required by the interests of commerce.

I do not think there would be any hesitation in this conclusion, if the whole subject of coinage had not been shrouded with a certain mystery, almost like the "black art." This appears constantly.

> "They cannot touch me for *coining;*
> I am the king,"

says Shakespeare; and Pope says, —

> "She now contracts her vast design,
> And all her triumphs shrink into a coin."

Like other incidents of sovereignty, coinage is reserved rightfully to the Government, and on this account is little appreciated in its true character. People sometimes err in not seeing that the delicate laws applicable to this subject must not be strained to interfere with the proper regulation of the value of gold when it has become a principal article of commerce.

Objection is also made on the ground that a mint is necessarily an expensive structure. But this is a mistake, arising partly from the general mystification on the subject, and partly because the Philadelphia mint,

which we have all seen, is an expensive structure. A mint, in plain terms, is nothing but a foundry provided with good locks and keys. If finished elaborately and expensively, it may attract the eye, but does not become more useful. The whole system of coinage has been twice changed during the present generation: first, by the change in assays of Gay-Lussac in 1830; and, secondly, by the introduction of the Munich press worked by steam, instead of the old hand-press with two ponderous balls as flies. And the Munich press itself has been much improved in France by Thonnelier. Now a mint should not be so costly as not to receive easily all improvements. The science of metallurgy is still in progress of development, and it cannot be doubted that the coming generation will witness improvements as important as any during our day. The eminent French authority to whom I have already referred, Dumas, was in the habit of ridiculing the expensive mints constructed in France. He desired that the present mint at Paris should be surrendered to some public office, and the business removed to an open space in the suburbs. In his Report he has furnished estimates showing the small expense of a mint, according to his ideas, adequate to all the coinage of France.

If you would see how the cost of a mint in our country may swell, at least in calculations on paper, if not in reality, I refer you to the memorial of the Board of Trade of Philadelphia in relation to the establishment of a branch mint at New York in 1852. But the mint pictured here is anything but the simple foundry which I have described, or the workshop which the Senator from Oregon asks you to authorize.

Mr. President, I hope that I have not occupied too much time with this statement. I am led to make it in order to show, that, in differing from the Committee on Finance, I have not proceeded without proper consideration. There are topics connected with the subject to which I do not allude, because I desire to confine my remarks to the points in issue. There are also details as to the cost of coinage in a well-regulated mint, involving the question of seigniorage, and the essential difference between the systems of England and France, which I should be glad to present; but I have said enough. There is, however, one practical remark, founded on the example of Spain, which I venture to add. It was the habit of this power to require that the initial letter of the place of coinage should appear on every piece, so that the coin from Madrid bore an M, from Seville an S, and that from Mexico M. This precaution rendered each mint responsible for its own work. In France, also, every mint had its special mark. The coins struck at Paris bear the letter A. Perhaps a similar requirement in our country might stimulate greater care in the several mints, by creating an honorable rivalry.

There is one other remark which I would make before I close. Much stress has been placed upon the opinion of the Director of the mint at Philadelphia. Indeed, the whole case against the proposed mint has been allowed to rest on his letter, which begins so whimsically. I hope that I have not spoken of him too freely; but, since his authority is invoked, I am led to ask if there is anything in his studies or scientific attainments calculated to render him a court without appeal on this question. It is obvious that his posi-

tion for the time being subjects him to influences hostile to new mints. He naturally seeks to amplify his jurisdiction, and to keep the tide of gold secure so that it shall not ebb from his marble building. Perhaps I do not use too strong language, if I say that he is under inducements to play the pedant for his own mint, and to quote it against every other mint. At all events, I think the Senate will be satisfied that on the present occasion he ought to be overruled.

The amendment creating the Branch Mint was adopted, — Yeas 23, Nays 16, — and the bill passed.

REFORM IN THE CIVIL SERVICE.

BILL IN THE SENATE, APRIL 30, 1864.

APRIL 30, 1864, Mr. Sumner asked, and by unanimous consent obtained, leave to bring in the following bill, which was read twice, and ordered to lie on the table and be printed.

This was a first effort for Civil Service Reform.

A BILL to provide for the greater Efficiency of the Civil Service of the United States.

BE it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be, and he hereby is, authorized to appoint, by and with the advice and consent of the Senate, a Board of Examiners, consisting of three Commissioners, at salaries of dollars a year. And the Commissioners may appoint a clerk to the Board, with an annual compensation of two thousand dollars. And these sums, and the necessary expenses of the Board, including rent and the travelling expenses of the Commissioners and clerk, shall be paid from any money in the Treasury not otherwise appropriated.

SECTION 2. *And be it further enacted,* That no person shall be appointed, after the date of this Act, to any civil office under the United States, whether by way of original appointment or promotion, unless re-

commended by a certificate of the Board: *Provided,* That this shall not apply to offices the appointing power to which is by the Constitution vested in the President by and with the advice and consent of the Senate: but applicants for such offices shall be examined by the Board, if they present themselves, and shall receive certificates in the same manner as other applicants.

SECTION 3. *And be it further enacted,* That the Board shall hold examinations of applicants for civil office under the United States at such places as they may designate, and at times to be determined by consideration of the needs of the service, and the number of vacancies to be filled, after consultation with the President, courts, or heads of departments, as the case may be, and after public notice of the time, place, and regulations of the proposed examination.

SECTION 4. *And be it further enacted,* That applicants for examination shall be citizens of the United States, (including all persons born in the United States, and not owing allegiance elsewhere,) between the ages of eighteen and twenty-five, and shall furnish such testimonials of personal character and take such oath of allegiance as the Board shall prescribe: *Provided,* That, if the examination is for any office the duties of which are to be performed in any particular State, then the applicant, in addition to the above requirements, shall have resided in such State one year before the time of examination, and in such case the Board shall designate a place of examination within such State: *Provided, however,* That the President may suspend the operation of the preceding proviso as to any States or parts of States where he may deem it expedient so to do.

SECTION 5. *And be it further enacted*, That the Board shall determine, after consultation with the President, courts, or heads of departments, as the case may be, upon the subjects of examination, and also whether the examination shall be oral, written, or both, and shall have full discretion as to the regulation of the examinations, and may employ such learned and honorable men as they may see fit to assist in the examinations, or to superintend examinations in their absence, and shall report their doings annually to Congress.

SECTION 6. *And be it further enacted*, That the Board, after the examination, shall assign the rank of the applicants, according to the degree of merit and fitness shown; and he who stands at the head of the list shall have the choice of vacancies in the particular department or branch for which he was examined, and so on down the list to the minimum of merit fixed by the Board, beyond which no certificate shall be given. The Board may, if they see fit, assign the right of seniority as a result of the first examination, or may require a further examination, the result of which shall determine seniority.

SECTION 7. *And be it further enacted*, That, after the appointment of a candidate recommended by the Board, he shall not be removed except for good cause, and promotions shall be according to seniority, which shall be determined in all cases by the dates of the recommendations of the Board and the rank therein assigned; but it shall be allowable to make one fifth of the promotions on account of merit irrespective of seniority.

This bill found an unexpected response from the public press. The *National Intelligencer*, at Washington, welcomed it.

"The object of this bill commands our entire approval, and we hope it

may equally receive the approval of Congress. Its passage, more than any other single decision that could be taken by Congress in the way of needed reforms, would tend to correct abuses which threaten our whole political system with wreck and ruin."

The *Evening Post,* of New York, was equally explicit.

"This bill, if passed, would do away with what has become one of the most serious vices in our political life, the 'Spoils system,' as it has been appropriately called. Congress should, as soon as possible, provide some rules for the reformation of this universal evil. The patronage of the President and his Cabinet officers has increased, is increasing, and ought to be diminished; it has become, by the extension of the country, the increase of population and wealth, and especially through the circumstances of the present war, so vast as to be dangerous to the nation, if it should chance to fall into the hands of unscrupulous and wicked men. But, besides this, it is manifestly impossible to carry on the immense business of the Government without extraordinary and ruinous loss and waste, under the old system of turning out the occupants of civil offices every four years. The Government thus virtually refuses the services of trained men, familiar with the office routine. If we desire public affairs to be administered honestly and economically, Congress must provide for the numerous servants of the Government regular grades of promotion, retention of office during good behavior, and, if possible, a small retiring pension, which might be arranged in the shape of an annuity and life insurance combined."

The New York *Times* noticed it at length, beginning, —

"Mr. Sumner has introduced a bill into the Senate, which, owing to the general absorption of the public attention in the great events which are taking place in the field, will probably not attract much notice; but it nevertheless attempts to deal with a matter which is of more importance, we venture to say, to the stability of this Government than any other one thing except the extinction of the Rebellion. It is neither more nor less than a sweeping measure of administrative reform, obliging all candidates for situations in the public service to pass an examination before a board appointed for the purpose, giving them their offices during good behavior, and with promotion through the various grades in the order of seniority, and a retiring pension after a certain term of service."

The *New Nation,* of New York, said : —

"Mr. Sumner has recently brought a bill in the Senate to regulate the conditions of admission to public offices of the highest importance to the country. This bill is based upon the most equitable, the most sincerely republican, and the most progressive principles as yet adopted in any country. We have not sufficient space to review this project at present. At the first glance we find it deficient only in one respect, namely, in carrying respect

for seniority to too great an extent. If this bill is passed, the era of inefficiency and favoritism, hitherto prevailing, will be at an end."

The New Bedford *Mercury* said : —

"Mr. Sumner's bill will cure the evils of which every sensible man now complains, and avert the terrible dangers which menace us. It contemplates a return to the practice of the better days of the republic, and making that practice the rule. 'Is he capable? Is he honest?' were the inquiries propounded by Jefferson, when a candidate for office was named."

The New York *World* devoted a leading article to the bill, which it criticized.

"We had supposed, that, in the opinion of Mr. Sumner, the disposition to be made of black men came nearest, in legislative importance, to the crushing out of the Rebels. . . . . Mr. Sumner's bill does not touch the evil in our clerical system. The difficulty is not in want of examination, classification, promotion, or pension, but springs, in the first place, out of the manner in which the President, through the heads of departments, exercises the appointing power, and, in the next place, out of the conduct of the clerks themselves, when in office. An examining board cannot change the general character of the men the President, directly or indirectly, sends before it."

These notices show the interest excited by this effort. In the various labors which occupied Mr. Sumner he was not able to give it the attention it required. Meanwhile the cause found an able advocate elsewhere.

The next step was by Hon. Thomas A. Jenckes, of Rhode Island, who introduced into the House of Representatives, December 20, 1865, a bill "To regulate the Civil Service of the United States," which was referred to the Committee on the Judiciary. Subsequently a special committee was appointed on the Civil Service of the United States, with Mr. Jenckes as Chairman, and June 13, 1866, he reported his bill to the House. Then again, at the next session, he reported another bill, "To regulate the Civil Service of the United States, and promote the efficiency thereof," which he sustained by a forcible and elaborate speech ; but the bill was laid on the table, — Yeas 72, Nays 66. Other efforts followed at subsequent sessions, but without success.

Meanwhile, in the Senate, on motion of Mr. Trumbull, of Illinois, March 3, 1871, the following section was attached to the General Appropriation Bill, then pending : —

"That the President of the United States be, and he is hereby, authorized to prescribe such rules and regulations for the admission of persons into the

Civil Service of the United States as will best promote the efficiency thereof, and ascertain the fitness of each candidate, in respect to age, health, character, knowledge, and ability, for the branch of service into which he seeks to enter; and for this purpose the President is authorized to employ suitable persons to conduct said inquiries, to prescribe their duties, and to establish regulations for the conduct of persons who may receive appointments in the Civil Service." [1]

Under this provision President Grant appointed the following Commissioners: George William Curtis, of New York; Alexander G. Cattell, of New Jersey; Joseph Medill, of Illinois; and Dawson A. Walker, E. B. Elliott, Joseph H. Blackfan, and David C. Cox, of the District of Columbia: who, after careful consideration during the summer and autumn, submitted a report December 18, 1871, with a schedule of rules and regulations, all of which was promptly communicated to Congress by the President.

[1] Acts, 1870-71, Ch. 114, Sec. 9: Statutes at Large, Vol. XVI. pp. 514, 515.

COLORED SUFFRAGE IN WASHINGTON.

REMARKS IN THE SENATE, ON BILLS TO AMEND THE CITY CHARTER, MAY 12, 26, 27, 28, 1864.

FEBRUARY 13th, Mr. Harlan, of Iowa, asked, and by unanimous consent obtained, leave to bring in a bill to amend section five of an Act entitled "An Act to continue, alter, and amend the charter of the city of Washington," approved May 17, 1848, and further to preserve the purity of elections and guard against the abuse of the elective franchise, by a registration of electors for the city of Washington, in the District of Columbia; which was read the first and second time, and referred to the Committee on the District of Columbia.

March 8th, Mr. Dixon, from the Committee, reported the bill without amendment.

March 17th, the bill was taken up and amended in unimportant particulars.

May 6th, it was again taken up, when, after an amendment moved by Mr. Dixon, Mr. Cowan, of Pennsylvania, moved to amend the bill in the first section by inserting the word "white" before the word "male," so as to confine the right of voting in Washington to white male citizens. Mr. Sumner said at once, "I hope not." Mr. Cowan then spoke in favor of his amendment.

May 12th, Mr. Cowan remarked that the bill "would have the effect, in some cases, of admitting negroes to the right of suffrage, which, I may say, is obnoxious to the vast bulk of the people of the Border States." Mr. Harlan would vote for Mr. Cowan's amendment, "first, because it is manifest to the Senate that the bill, without that provision in it, cannot now become a law." Mr. Willey, of West Virginia, spoke elaborately against colored suffrage, winding up with this interrogatory: "Shall we, without any petitions from the people of this District, without anything before the Senate to indicate that this bill, in any of its parts, is required by the people of this District, undertake to say, of our own volition, that we will impose upon them a provision which is odious to them, and will, in my estimation, be disastrous in its results,

not only here, but in its influence on popular opinion everywhere in this nation?"

Mr. Sumner followed.

MR. PRESIDENT, — Slavery dies hard. It still stands front to front with our embattled armies, holding them in check. It dies hard on the battle-field. It dies hard in the Senate Chamber. We have been compelled during this session to hear various defences of Slavery, sometimes in its most offensive forms. Slave-hunting has been openly vindicated. And now, to-day, the exclusion of colored persons from the electoral franchise, simply on account of color, is openly vindicated, and the Senator from West Virginia, newly introduced into this Chamber from a State born of Freedom, rises here to uphold Slavery in one of its meanest products.

MR. WILLEY. Mr. President, I cannot pass that assertion without giving it an unequivocal, categorical denial. I have not vindicated Slavery in any of its aspects. I said to the Senator, what perhaps he did not hear before, that, when he has liberated by the sweat of his brow as many slaves as I have, he can get up and make such a remark in regard to me.

MR. SUMNER. I said, Sir, that the Senator vindicated Slavery in one of its meanest products. I repeat what I said. The Senator has spoken, I do not know how long by the clock, to vindicate an odious prejudice bequeathed by Slavery, having its origin in Slavery, and in nothing else. Had Slavery never existed among us, there would have been no such prejudice as that of which the Senator makes himself the representative. Far better would it be for that Senator, who comes into this Chamber as the representative of a new-born free State, had he surrendered generously to the sentiment in which West

Virginia had its birth. But, instead, he comes forward and labors with unwonted earnestness to perpetuate at the national capital an odious feature derived from Slavery. The Senator says he has not vindicated Slavery. If he has not used the word, he has vindicated the thing, in one of its most odious features. He seeks to blast a whole race merely on account of color. Would he ever have proposed such injustice, but for the prejudices nursed by Slavery? Had not Slavery existed, would any such idea have found place in a Senator naturally so generous and humane? No, Sir, — he spoke with the voice of Slavery, which he cannot yet forget. He spoke under the unhappy and disturbing influences which Slavery has left in his mind.

Now, Sir, I am against Slavery, wherever it shows itself, whatever form it takes. I am against Slavery, when compelled to meet it directly; and I am against Slavery in all its products and its offspring. I am against Slavery, when encountering the beast outright, or only its tail. The prejudices of which the Senator makes himself the representative to-day, permit me to say, are nothing but the tail of Slavery. Unhappily, while we have succeeded in abolishing Slavery in this District, we have not yet abolished the tail; and the tail has representatives in the Senate Chamber, as the beast once had.

We have been reminded that we are engaged in a fearful conflict. The Senator has reminded us of it. Senators nearer to me have reminded us of it. This is too true; and now, as that conflict lowers, I invoke the spirit of our fathers. They went forth to battle with the Declaration of Independence on their lips, solemnly declaring that all men are born equal, entitled

to life, liberty, and the pursuit of happiness. They introduced no discrimination of color into that sacred text, nor into the contemporary Articles of Confederation, nor into the Constitution of the United States, which was the work of their hands. I am content to be guided by their example. As they went forth to meet the enemy, they placed themselves under the protection of the God of Justice. Let us imitate them.

I had not intended to say a word on this occasion; but I could not listen to the remarks of the Senator, so harsh and unfeeling toward a whole race, belonging to the human family, like himself, without interposing a solemn protest.

Since this debate began, I have sent to the Law Library for a volume containing the authoritative words of a distinguished Southern jurist, a slaveholder, with regard to the electoral franchise. It has been a question, in what States, at the time of the adoption of the Constitution, colored persons enjoyed this franchise. I say nothing now about the more northern States; but there is a State, sometimes referred to, with regard to which there is peculiar evidence: I mean North Carolina. The enjoyment of the electoral franchise by colored persons in that State for a long time after the Constitution is not a matter of doubt. Her most eminent magistrate, the late Mr. Justice Gaston, accomplished as a jurist and as a man, whom I remember well in most agreeable personal intercourse, laid down the law of his State in emphatic words. Pronouncing the opinion of the Supreme Court of North Carolina in the case of *The State* v. *Manuel*, in 1838, he said: —

"Slaves manumitted here become freemen, and therefore, if born within North Carolina, are citizens of North Carolina;

and all free persons born within the State are born citizens of the State. . . . . The Constitution extended the elective franchise to every freeman who had arrived at the age of twenty-one and paid a public tax; *and it is a matter of universal notoriety, that, under it, free persons, without regard to color, claimed and exercised the franchise, until it was taken from free men of color a few years since by our amended Constitution.*" [1]

There is still another case, that of *The State* v. *Newsom*, which was decided in 1844, where the Supreme Court of North Carolina, after citing the opinion of Judge Gaston from which I have just read, proceeds: —

"That case underwent a very laborious investigation, both by the bar and the bench. . . . . The case was brought here by appeal, and was felt to be one of great importance in principle. It was considered with an anxiety and care worthy of the principle involved, and which gave it a controlling influence and authority on all questions of a similar character." [2]

Therefore not hastily or carelessly did the Supreme Court of North Carolina declare colored persons to be voters under the State Constitution.

Such was the constitutional law of North Carolina, fashioned by our fathers under the influence of the Declaration of Independence. Sir, I am content with that law. I do not think the Senator from Pennsylvania [Mr. COWAN], though he represents a Northern State, can mend that law from a Slave State. Nor do I think that any of us on this floor can feel humbled, if our judgment is postponed to that of Judge Gaston of North Carolina, who did not hesitate to declare posi-

[1] 4 Devereux and Battle, R., 25. [2] 5 Iredell, R., 253.

tively the constitutional law of human rights, by virtue of which colored persons are citizens. And if they are citizens, how can you deny them the electoral franchise?

I am content to leave the question here, adding, that, as I understand it, I shall deem it my duty to vote against all propositions creating any discrimination of color. At this moment of revolution, when our country needs the blessing of Almighty God and the strong arms of all her children, this is not the time for us solemnly to enact injustice. In duty to our country, and in duty to God, I plead against any such thing. We must be against Slavery in its original shape, and in all its brood of prejudice and error.

This bill was never considered again; but the question of colored suffrage in Washington reappeared.

May 24th, Mr. Wade, from the Committee on the District of Columbia, reported a joint resolution to amend the charter of the city of Washington, which was read twice and considered as in Committee of the Whole In reporting it, he said: "It relates to the registration of voters; and if it is to be passed at all, it ought to be passed immediately. I believe there is no objection to it. It alters none of the present qualifications of voters, but improves the present law as to registration, which is very defective."

May 26th, the consideration of the joint resolution was resumed, when Mr. Sumner said:—

EXAMINING this joint resolution, I find that it is entitled "A Resolution to amend the charter of the city of Washington." In that aspect it is important. Looking into it, I find the provision,—

"That, in case any person shall offer and claim the right to vote at any election held in the city of Washington, whose name is not registered, his name shall be registered by the Commissioners of Election upon the terms and conditions following."

It will be observed that the language is very broad. It is applicable to any person who shall offer and claim the right to vote at any election; and his name shall be registered upon certain specified conditions. The first condition is, that he shall take a certain oath; and if unable to understand the English language, it is further provided that the oath shall be interpreted to him: so that this clause actually contemplates that certain persons shall be registered who do not speak the English language. It then proceeds:—

"If in his answers on oath he shall state positively that he has resided in the city one year next preceding the day of said election, designating particularly the place of his residence, and that he possesses the other qualifications of an elector, and if, furthermore, some qualified elector of the city, not a candidate for any office at that election, shall take an oath before said Commissioners, which any one of them may administer, that he is well acquainted with such applicant, that he is, in fact, a resident in the city, and has been one year next previous to such election, and that he (qualified elector) has good reason to believe, and does believe, that all the statements of such applicant are true, the Commissioners shall cause his name to be registered by their clerk, and shall then receive the vote of said applicant."

Now it is at once perceived from these words, that they are directly applicable, in the first place, to any person who shall offer and claim the right to vote at an election; but, after taking the oath, he is to show residence for a certain term in the city, and also that "he possesses the other qualifications of an elector." What are "the other qualifications of an elector"? I presume, if we go back to the original charter, we shall find it is that qualification which, as I said the other

day, is the tail of Slavery, — that discrimination of color left to us, unhappily, by the former presence of Slavery in the national capital. I know not if the Committee propose to keep alive that ancient and odious discrimination; but it seems to me, that, if the language of this joint resolution be interpreted according to its natural signification, and certainly as such language is apt to be interpreted here in Washington, it must operate to the exclusion of persons not of the favored color. I know my friend from Ohio does not contemplate such exclusion; but a joint resolution to amend the charter of the city of Washington ought to be made clear, and also in that respect unobjectionable; it ought not to be the means of continuing and of extending that odious discrimination. I therefore propose to amend it by adding these words: —

"*Provided*, That there shall be no exclusion of any person from the register on account of color."

Mr. Wade was in favor of colored suffrage; but the Committee, in reporting this measure, did "not contemplate going into the question of the right of suffrage, or extending that right beyond those who are at present authorized to exercise it. It does not widen the suffrage; it does not narrow it."

Mr. Sumner began a reply to Mr. Wade.

Mr. President, — The argument of my friend from Ohio was, that the measure now before the Senate is temporary in its character. That is inconsistent with the title of the joint resolution, which is as follows.

Mr. Wade. Let me explain. I say temporary, because we all know that there is a bill fixing the right of voting, that, I suppose, is intended as a permanent law. This is temporary in that view. That is all I meant.

MR. SUMNER. That certainly will not justify my friend in his argument, for on the face of it this is permanent. It is as permanent as anything else in the existing charter. Its title is, "A Resolution to amend the charter of the city of Washington." When this is done, what assurance has my friend that anything else will be done? There is a bill on our tables. How many other bills are there on other matters which we may not reach during this session, or, if we reach, on which we cannot expect harmonious votes in the two Houses!

Here Mr. Sumner was interrupted by the Tax Bill, which was the order of the day.

May 27th, Mr. Sumner resumed.

I WAS interrupted yesterday by other business, called up while I was replying to my friend from Ohio [Mr. WADE]. I did not propose any extended reply.

It is with pain that I differ from friends. But with me there is no choice. Here is a measure which opens the whole question of suffrage in the national capital, and assumes the form of amendment to the charter of the city of Washington. It provides that certain persons shall be registered, including even those who cannot speak English; but in positive terms *it continues and keeps alive the old rule founded on color.* Now, Sir, I cannot sanction any such rule directly or indirectly.

But it is said, that, in pressing my amendment, the original proposition may be lost. This I shall regret much; for I desire its passage sincerely. But I can see no reason why a discrimination of color should be made in the bill, or in our proceedings. If white persons are kept out of their rights, so are colored persons; and I

would ask my friend from Ohio, Which has been kept out the longest? I am for the rights of both, to the end that we may have at last in the national capital *Equality before the law.*

We are shocked daily by the report of outrages upon colored persons. In Tennessee a colored woman has been murdered under the lash. Near Fortress Monroe another colored woman has been cruelly treated under the lash. This must be stopped. But I know no way so effective as to set an example of justice and humanity. If we sanction slave-hunting, if we disregard the rights of colored persons, if we treat them as inferior in condition, unhappily, Sir, there are others who will follow our example, and add a vindictive cruelty.

Therefore, insisting upon the rights of colored persons here, I insist upon their rights everywhere. Nor do I see how I can abandon their rights here without abandoning them everywhere. We are Senators of the United States, bound to consider the whole country in all its extent, and to do nothing here which shall do mischief elsewhere; nor can we yield to any local pressure, or any imagined local interests, and thus forget the cause of justice.

It is vain to say that this measure is temporary; for, in plain terms, it undertakes to amend the charter of Washington. It is vain to say, also, that there is another bill now on your calendar regulating this whole question. Who can say that this bill will become a law? Ay, Sir, who can say, that, in the hurried hours of these closing days of a weary session, the bill will even be considered again? And yet on these grounds we are asked to abandon the present assertion of the rights of colored persons. If the bill conferring these

rights can pass, so also can the present measure. If it be practical to assert these rights on one bill, it is equally practical to assert them on another, where such assertion is germane. It only remains that Senators should stand firm.

For myself, I will not sanction injustice; nor will I miss any opportunity of asserting the rights of an oppressed race. I may be alone; but, to the extent of my powers, I mean to be right.

Mr. Morrill appealed to Mr. Sumner to withdraw his opposition, saying: "Now, as a question of practical statesmanship, I submit to my honorable friend whether it is not the part of wisdom to say we will do this now and we will consider the other question when it comes up." Mr. Harlan moved to amend by adding, "who have borne arms in the military service of the United States, and have been honorably discharged therefrom." This amendment, limiting Mr. Sumner's proposition, was agreed to, — Yeas 26, Nays 12.

May 28th, Mr. Sumner spoke again, and adduced the details of the recent outrage in Tennessee, saying, in conclusion: —

We all feel, Sir, the brutality of this act. It was done by a white man on the person of a colored woman. Would he have been the author of such a brutality, had the woman been white? No; because she was black, he thus insulted human nature, and performed an act never to be read without a blush that he is a member of the human family. And how are we to discountenance such acts? Is it by keeping alive this odious discrimination of color, by imparting to it the sanction of law, by investing it with the authority of this Chamber? I appeal to you, Senators, as men of humanity, do not continue a discrimination, which, proceeding from this Chamber, must exercise a far-reaching influence. It is not simply the question of a few voters more or less in the District, but it is a question of human rights

everywhere throughout this land, involving the national character and its good name forevermore.

Again, in reply to Mr. Reverdy Johnson, Mr. Sumner said: —

But the Senator thinks that I am not logical, because I quote an outrage in Tennessee having its origin in the prejudice of color, and insist that here in this Chamber we shall not found legislation on a prejudice of color. Sir, I submit the question to the judgment of the Senate: Am I illogical, or is the Senator so? I insist, Sir, that you cannot sanction injustice here, especially you cannot sanction a prejudice founded on color, without quickening that prejudice, and sustaining it, wherever it now unhappily exists throughout our whole country.

At the next stage of the joint resolution, the question recurred on concurring with the amendment in Committee of the Whole: —

"*Provided*, That there shall be no exclusion of any persons from the register, on account of color, who have borne arms in the military service of the United States, and have been honorably discharged therefrom."

And it was rejected, — Yeas 18, Nays 20. The joint resolution was then passed.

And so this second battle for colored suffrage was lost.

VOTE OF BOTH HOUSES OF CONGRESS NECESSARY TO READMISSION OF REBEL STATES.

Resolution in the Senate, May 27, 1864.

The Senate having under consideration the credentials of certain claimants as Senators from Arkansas, Mr. Sumner offered the following resolution: —

Resolved, That a State pretending to secede from the Union, and battling against the National Government to maintain this pretension, must be regarded as a Rebel State, subject to military occupation, and without title to representation on this floor, until it has been readmitted by a vote of both Houses of Congress; and the Senate will decline to entertain any application from any such Rebel State, until after such vote of both Houses of Congress.

June 13th, on motion of Mr. Sumner, the resolution was referred to the Committee on the Judiciary, at the same time with a joint resolution by Mr. Lane, of Kansas, recognizing the existing government of Arkansas, and also the credentials of the claimants as Senators.

June 27th, Mr. Trumbull from the Committee reported adversely on all these references.

The requirement of this resolution was affirmed by the Senate, when it adopted the amendment of Mr. Gratz Brown to the Reconstruction Bill of the House, July 1st,[1] and it became a corner-stone of Reconstruction.

[1] *Post*, pp. 397, 398.

NO TAX ON BOOKS.

Remarks in the Senate, on Amendment of the Internal Revenue Bill, June 2 and 6, 1864.

THE Senator from New York [Mr. Morgan] has proposed the exemption of a class of hospitals. I am in favor of his proposition. It is not now, however, under discussion. In similar spirit I move to strike out, on the one hundred and thirty-fifth page, lines two hundred and twelve, two hundred and thirteen, and two hundred and fourteen, as follows: —

"On all printed books, magazines, pamphlets, reviews, and all other similar printed publications, except newspapers, a duty of five per cent *ad valorem*."

I make one remark on this tax. We do not tax wheat or corn, because they are the staff of life. In my judgment, a tax on books is less defensible than a tax on wheat or on corn. I believe books are the staff of life; and I believe that our country would do itself honor, if at this moment, when imposing a heavy tax upon all things, it deliberately exempted books. The tax proposed is applicable to all books, — books for family reading, for the library, and also for the school. All that we can get from the tax will be very small indeed. It will not add sensibly to the Treasury, but it will impose a burden upon knowledge. I hope, therefore, that the Senate will strike the words out.

The motion was rejected.

At the next stage of the bill Mr. Sumner renewed his motion to strike out the tax on books, and then said : —

Mr. President, — I am sorry to occupy the attention of the Senate, even for a moment, especially at this late stage of a protracted debate. But I feel that the question which I have presented is not adequately appreciated. I venture to say, that, in point of principle, few questions of equal importance have arisen on this bill.

The tax on books is peculiar, and, so far as I know, without precedent in other countries. In England paper has been taxed, but books not; here paper is to be taxed, and books too. For instance, there is to be a tax of three per cent on paper, and then five per cent additional on books, making a sum-total of eight per cent on books.

The tax of three per cent on paper seems contrary to sound policy. But the additional tax of five per cent on books is more indefensible still. I have already likened it to a tax on wheat or flour or bread, which you do not think of imposing. More than either of these is a book "the staff of life." It may be likened also to a tax on the light of day, like the English window-tax, which you do not think of imposing. Better shut out the light of day than the light of books.

The book in some cases may be a luxury, but in most cases it is a necessary, while always the handmaid of civilization. It is for all ages and all conditions, — for young and old, for rich and poor, for the family circle as well as the library, — but it is especially for the school. In all these places you will enter and demand eight per cent on every book. Every book, if it had a voice, would repel the demand.

Why not be instructed by the example of England,

when taxing everything taxable? Read the extensive list of articles taxed at the period of most searching and wide-spread taxation, and you do not find books. Read that marvellous enumeration made by the genius of Sydney Smith, and you do not find books.

"Taxes upon every article which enters into the mouth, or covers the back, or is placed under the foot; taxes upon everything which it is pleasant to see, hear, feel, smell, or taste; taxes upon warmth, light, and locomotion; taxes on everything on earth and the waters under the earth, on everything that comes from abroad or is grown at home; taxes on the raw material; taxes on every fresh value that is added to it by the industry of man; taxes on the sauce which pampers man's appetite, and the drug that restores him to health, — on the ermine which decorates the judge, and the rope which hangs the criminal, — on the poor man's salt, and the rich man's spice, — on the brass nails of the coffin, and the ribbons of the bride, — at bed or board, couchant or levant, — we must pay. The school-boy whips his taxed top; the beardless youth manages his taxed horse with a taxed bridle on a taxed road; and the dying Englishman, pouring his medicine which has paid seven per cent into a spoon that has paid fifteen per cent, flings himself back upon his chintz bed which has paid twenty-two per cent, and expires in the arms of an apothecary who has paid a license of a hundred pounds for the privilege of putting him to death. His whole property is then immediately taxed from two to ten per cent. Besides the probate, large fees are demanded for burying him in the chancel; his virtues are handed down to posterity on taxed marble; and he is then gathered to his fathers, to be taxed no more."[1]

A passage so exquisite in wit and language is sea-

[1] America; Review of Seybert's Statistical Annals: Edinburgh Review, January, 1820: Works (London, 1840), Vol. I. p. 372.

sonable here, especially when considering what shall be taxed; but I ask you to bear in mind that the English tax-gatherer never laid his hand on a book. Everything else he might touch, — a book never.

And yet in our country it is proposed to tax books. This is the land of public schools, where you boast that education, like justice, is free to all at the common cost. But a tax on books is in direct conflict with this beautiful principle. Every argument for free schools pleads also for free books, — at least for freedom from taxation. It will be a curious inconsistency to rear the school-house, often costly, where every child is welcomed without charge, and then compel him to pay a tax of eight per cent on every book he carries in his satchel.

There is one term which fitly characterizes this tax. It is a term adopted abroad, but more justly applicable to a tax on books than to any other tax: I mean *a tax on knowledge*. Such is the tax now proposed. And this tax, which cannot be named without awakening just condemnation, you are asked to make an American institution. After long struggle in England, the various *taxes on knowledge* are abandoned. I hope that our country, representative and defender of liberal ideas, will not commence a system which modern civilization has disowned.

I ask for the yeas and nays.

The motion was lost, — Yeas 8, Nays 19.

CREATION OF THE FREEDMEN'S BUREAU:

A BRIDGE FROM SLAVERY TO FREEDOM.

SPEECHES IN THE SENATE, ON BILLS AND CONFERENCE REPORTS CREATING A BUREAU OF FREEDMEN, JUNE 8, 14, 15, 1864, AND FEBRUARY 13, 21, 22, 1865.

MARCH 1, 1864, after debate on different days in February, the House of Representatives adopted a bill to establish a Bureau of Freedmen's Affairs.

March 2d, in the Senate, this bill was referred to the Committee on Slavery and Freedmen, of which Mr. Sumner was Chairman.

May 25th, Mr. Sumner reported the bill to the Senate with a substitute. The intermediate period was occupied by the Committee in a careful and laborious consideration of the whole subject, involving the question of power proper for the Bureau, whether it should be placed in the War Department or in the Treasury Department, which already had the care of abandoned lands. No less than nine different projects were laid before the Committee, some by eminent citizens interested in the freedmen, among whom were Hon. Robert Dale Owen, of Indiana, Hon. John Jay, of New York, and Edward L. Pierce, of Massachusetts. The House bill was not satisfactory. Mr. Owen said, in a letter dated March 8th, "In my judgment the bill of the House will not work."

The bill reported by Mr. Sumner was drafted by him, and adopted by the Committee. It was in ten sections, and began with these words: "That an office is hereby created in the Treasury Department, to be called the Bureau of Freedmen, meaning thereby such persons as have become free since the beginning of the present war."

June 8th, the Senate proceeded to consider the bill, when Mr. Sumner explained and vindicated it.

MR. PRESIDENT, — The Senate only a short time ago was engaged for a week considering how to open an iron way from the Atlantic to the Pacific. It is now to consider how to open a way from Slavery to Freedom.

I regret much that only thus tardily we are able to take up the bill for a Bureau of Freedmen. But I trust that nothing will interfere with its consideration. In what I have to say, I shall confine myself to a simple statement. If I differ from others, I beg to be understood it is in no spirit of controversy and with no pride of opinion. Nothing of the kind can enter justly into any such discussion.

I shall not detain the Senate to set forth the importance of this measure. All must confess it at a glance. It is clearly a charity and a duty.

By virtue of existing Acts of Congress, and also under the Proclamation of the President, large numbers of slaves have suddenly become free. These may be counted by the hundred thousand. In the progress of victory they will be counted by the million.

As they derive their freedom from the United States, under legislative or executive acts, the National Government cannot be excused from making such provisions as may be required for their immediate protection and welfare during the present *transition period*. The freedom conferred must be rendered useful, or at least saved from being a burden. Reports, official and unofficial, show the necessity of action. In some places it is a question of life and death.

It is superfluous to quote at length from these reports, while all testify alike, whether from Louisiana, South

Carolina, Fortress Monroe, Vicksburg, Tennessee, or Arkansas. I know not where the call is most urgent. It is urgent everywhere ; and in some places it is the voice of distress.

Wherever our arms have prevailed, the old social system has been destroyed. Masters have fled, and slaves have assumed a new character. Released from former obligations, and often adrift in the world, they naturally look to the prevailing power. Here, for instance, is testimony which I take from an excellent report in the department of Tennessee, under date of April 29, 1863 : —

" Negroes, in accordance with the Acts of Congress, free on coming within our lines, circulated much like water ; the task was to care for and render useful.

" They rolled like eddies around military posts ; many of the men employed in accordance with Order No. 72, district West Tennessee ; women and children largely doing nothing but eating and idling, the dupes of vice and crime, the unsuspecting sources of disease."

From this statement Senators may form an idea of the numbers seeking assistance.

The question is often asked as to the disposition of those persons to labor. Here, also, the testimony is explicit. I have in my hand the answers from different stations on this point.

" Question. ' What of their disposition to labor ? '

" Answer. *Corinth.* ' So far as I have tested it, better than I expected ; willing to work for money, except in waiting on the sick. One hundred and fifty hands gathered five hundred acres of cotton in less than three weeks, much of which time was bad weather. The owner admitted that it was done more quickly than it could have been done with slaves.

When detailed for service, they generally remained till honorably discharged, even when badly treated. I am well satisfied, from careful calculations, that the contrabands of this camp and district have netted the Government, over and above all their expenses, including rations, tents, &c., at least $3,000 per month, independent of what the women do, and all the property brought through our lines from the Rebels.'

"*Cairo.* 'Willing to labor, when they can have proper motives.'

"*Grand Junction.* 'Have manifested considerable disposition to escape labor, having had no sufficient motives to work.'

"*Holly Springs and Memphis.* 'With few exceptions, generally willing, even without pay. Paid regularly, they are much more prompt.'

"*Memphis.* 'Among men better than among women. Hold out to them the inducements, benefit to themselves and friends, essential to the industry of any race, and they would at once be diligent and industrious.'

"*Bolivar.* 'Generally good; would be improved by the idea of pay.'"

Here, also, is a glimpse at Newbern, North Carolina, under date of February 26, 1864:—

"Immediately on my return here, on the 12th of October, I instituted measures for placing the different abandoned plantations within our lines in this State under proper management and cultivation. As soon as it became known, that, as supervising Treasury agent, I had charge of this property, I was visited by hundreds (and I might correctly say thousands) of contrabands, along with numerous white persons, desiring to obtain privileges to work upon the same."

And here is the testimony of General Banks, in Louisiana:—

"Wherever in the department they have been well treated and reasonably compensated, they have invariably rendered faithful service to their employers. From many persons who manage plantations I have received the information that there is no difficulty whatever in keeping them at work, if the conditions to which I have referred are complied with."

I do not quote further, for it would simply take time. But I cannot forbear adding that the report from the Commissioners on Freedmen, appointed by the Secretary of War, accumulates ample testimony on this head, all showing that the freedmen are anxious to find employment. Your Treasury testifies to their productive power, for it contains at this moment more than a million dollars which have come from the sweat of freedmen.

It is evident, then, that the freedmen are not idlers. They desire work. But, in their helpless condition, they have not the ability to obtain it without assistance. They are alone, friendless, and uninformed. The curse of Slavery is still upon them. Somebody must take them by the hand, — not to support them, but simply to help them obtain the work which will support them. Thus far private societies in different parts of the country, at the East and the West, especially at all the principal centres, have done much toward this charity. But private societies are inadequate to the duties required. The intervention of the National Government is necessary. Without such intervention, many of those poor people, freed by our acts in the exercise of a military necessity, will be left to perish.

The service required is too vast and complex for unorganized individuals. It must proceed from the Na-

tional Government. This alone can supply the adequate machinery, and extend the proper network of assistance, with the proper unity of operation. The National Government must interfere in the case, precisely as in building the Pacific Railroad. Private charity in our country is active and generous; but it is powerless to cope with the evils arising from a wicked institution; nor can it provide a remedy, where society itself is overthrown.

There are few who will not admit that something must be done by the Government. Cold must be the heart that could turn away from this call. But whatever is done must be through some designated agency; and this brings me to another aspect of the question.

The President in his Proclamation of Emancipation has used the following language: "I recommend to them," — that is, to the freedmen, — "that in all cases, when allowed, they labor faithfully for reasonable wages." Such is the recommendation from that supreme authority which decreed Emancipation. They are to labor, and for reasonable wages. But the President does not undertake to say how this opportunity shall be obtained, — how the laborer shall be brought in connection with the land, how his rights shall be protected, and how his new-found liberty shall be made a blessing. It was enough, perhaps, on the occasion of the Proclamation, that the suggestion should be made. Faithful labor and reasonable wages: let these be secured, and everything else will follow. But how shall they be secured?

Different subjects, as they become important, are committed to special bureaus. I need only refer to Patents, Agriculture, Public Lands, Pensions, and In-

dian Affairs, — each under the charge of a separate Commissioner. Clearly, the time has come for a Bureau of Freedmen. In speaking of this agency, I mean a bureau which will be confined in operation to the affairs of freedmen, and not travel beyond this increasing class to embrace others, although of African descent. Our present necessity is to help those made free by the present war; and the term "freedmen" describes sufficiently those who have once been slaves. It is this class we propose to help during the *transition period* from Slavery to Freedom. Call it charity or duty, it is sacred as humanity.

And here a practical question arises with regard to the department in which this bureau should be placed. There are reasons for placing it in the War Department, at least during the war. There are other reasons for placing it in the Department of the Interior, which has charge of Indian Affairs, Pensions, and Patents. But, whatever the reasons on general grounds for placing it in one of these two departments, there are other reasons, of special importance at this moment, which point to the Treasury Department. Indeed, after careful consideration, the Committee were satisfied that it was so clearly associated with other interests already intrusted to this department, that it could not be advantageously administered elsewhere. Although beginning this inquiry with a conviction in favor of the War Department, I could not resist the conclusion of the Committee.

Look, for one moment, at the class of duties already imposed upon the Treasury Department in connection with the very homes of these freedmen.

Congress has, by special Acts, conferred upon the

Secretary of the Treasury extraordinary powers with regard to trade in the Rebel States. There is, first, the Act of July 13, 1861, entitled "An Act further to provide for the collection of duties on imports, and for other purposes," which declares that commercial intercourse with any State or part of a State in rebellion, when licensed by the President, "shall be conducted and carried on *only in pursuance* of rules and regulations prescribed by the Secretary of the Treasury." And it is further provided, that "the Secretary of the Treasury may appoint such officers, at places where officers of the customs are not now authorized by law, as may be needed to carry into effect such licenses, rules, and regulations." [1]

There is another Act of Congress, approved May 20, 1862, supplementary to that just named, which confers additional powers upon the Secretary of the Treasury with reference to trade with "any place in the possession or under the control of insurgents against the United States." [2]

There is also the Act of June 7, 1862, entitled "An Act for the collection of direct taxes in insurrectionary districts within the United States, and for other purposes." In this Act it is provided, (section nine,) that, where the Board of Commissioners shall be satisfied that the owners of lands "have left the same to join the Rebel forces, or otherwise to engage in and abet this Rebellion, and the same shall have been struck off to the United States at public sale, the said Commissioners shall, in the name of the United States, enter upon and take possession of the same,

[1] Acts 1861, Ch. III. Sec. 5: Statutes at Large, Vol. XII. p. 257.
[2] Acts 1861–2, Ch. LXXXI. Sec. 3: Ibid., p. 404.

and may lease the same, together or in parcels, to any person or persons who are citizens of the United States"; and (section ten) the Commissioners "shall from time to time make such temporary rules and regulations and insert such clauses in said leases as shall be just and proper to secure proper and reasonable employment and support, at wages or upon shares of the crop, of such persons and families as may be residing upon the said parcels or lots of land, which said rules and regulations are declared to be subject to the approval of the President."[1] The execution of this Act is lodged in the Treasury Department.

Then comes the Act of Congress, approved March 12, 1863, entitled "An Act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States," under which the Secretary of the Treasury is authorized "to appoint a special agent or agents to receive and collect all abandoned or captured property in any State or Territory or any portion of any State or Territory of the United States, designated as in insurrection against the lawful Government of the United States." The Act proceeds with details on the subject.[2]

Such are powers conferred by Congress upon the Treasury Department concerning trade and abandoned property in the Rebel States. These were followed by a general order from the War Department, as follows: —

[1] Acts 1861-2, Ch. XCVIII.: Statutes at Large, Vol. XII. pp. 424, 425.
[2] Acts 1862-3, Ch. CXX.: Ibid., pp. 820, 821.

"General Orders, No. 331.

"War Department, Adjutant-General's Office,
"Washington, October 9, 1863.

"The President orders : —

"1. All houses, tenements, lands, and plantations, except such as may be required for military purposes, which have been or may be deserted and abandoned by insurgents within the lines of the military occupation of the United States forces in States declared by proclamation of the President to be in insurrection, will hereafter be under the supervision and control of the supervising special agents of the Treasury Department.

"2. All commanders of military departments, districts, and posts will, upon receipt of this order, surrender and turn over to the proper supervising special agent such houses, tenements, lands, and plantations, not required for military uses, as may be in their possession or under their control ; and all officers of the army of the United States will at all times render to the agents appointed by the Secretary of the Treasury all such aid as may be necessary to enable them to obtain possession of such houses, tenements, lands, and plantations, and to maintain their authority over the same.

"By order of the Secretary of War.

"E. D. Townsend,
"*Assistant Adjutant-General.*"

By this order, the Treasury Department is substituted for the War Department in jurisdiction over "houses, tenements, lands, and plantations deserted and abandoned by insurgents within the lines of military occupation." This is broad, but it is positive.

In pursuance of these Acts of Congress, and of this order of the War Department, the Secretary of the Treasury has proceeded to appoint special agents and to establish a code of regulations. I have in my hands a

small volume, entitled "Commercial Intercourse with and in States declared in Insurrection, and the Collection of Abandoned and Captured Property,"[1] containing the statutes and also the departmental regulations on the subject. It appears that there is already an organization under the Secretary of the Treasury, and also a system, each of reasonable completeness, to carry out these purposes.

In determining where the Bureau of Freedmen should be placed, it becomes important to consider the interests it is proposed to guard; and this brings me to another aspect of the question.

Looking at the freedmen whose welfare is in question, we find that their labor may be classified under two different heads: first, *military;* and, secondly, *predial,* or relating to farms. There are still other laborers, including especially mechanics; but these are chiefly in the towns. The large mass are included in the two classes I have named. It is, therefore, these two classes that are to be particularly considered.

1. The first class is already provided for. It appears that one hundred thousand freedmen are already engaged in the military service as soldiers or laborers. Others will continue to be engaged in this way. These are all naturally and logically under the charge of the War Department; nor do they need the superintendence of the proposed bureau. The Act of Congress equalizing their condition in the army of the United States is better for them than any bureau.

2. But there will remain the other larger class, con-

[1] Report of the Secretary of the Treasury, 1863, Paper No. 28: Executive Documents, 38th Cong. 1st Sess., H. of R., No. 3.

sisting in the main of women and children and farm laborers, who must find employment on the abandoned lands. To this labor they are accustomed. These lands are their natural home. But this class must naturally and logically come under the charge of the department which has charge of the abandoned lands. Conceding that all in the military service fall under the superintendence of the War Department, it follows with equal reason that all who labor on the lands must fall under the superintendence of the Treasury Department, so long, at least, as this department has charge of the lands.

This conclusion seems so reasonable that your Committee were not able to resist it. But the testimony of persons who have given particular attention to the question is also explicit; so that experience is in harmony with reason. I have in my hands a letter from Colonel McKaye, an eminent citizen of New York, and also a member of the Commission to inquire and report on this subject, appointed by the Secretary of War. After visiting South Carolina and Louisiana, expressly to study the necessities of freedmen, and to ascertain what could be done to benefit them, he thus expresses himself: —

"*In the first place*, everybody who has had any *practical experience* of the working of the plantations or of the superintendence of negro labor will tell you that *the control of the abandoned plantations and the care of the colored people must be in the same hands.*"

You will not fail to observe how positively this *expert* speaks. According to him, all who have had "practical experience" insist that the care of the freedmen and of

the plantations should be "in the same hands"; and so important does he regard this point that he places it first in consideration.

But Colonel McKaye is not alone. Here is a letter from Hon. Robert Dale Owen, Chairman of the Commission on Freedmen, appointed by the Secretary of War, which testifies as follows: —

"It will never do to have Treasury agents who lease the lands to white men, and War Department agents who assign the same lands to colored people. Nothing but confusion and conflict of authority can result. It will not work at all. But even if it would, why employ two sets of agents to do what one set can do much better? And who is to inspect the leased plantations, and see to it that neither employers nor employed are wronged? The men who gave the leases? But they are Treasury agents, and have nothing to do with freedmen. Or the Freedmen's Commissioners? But what authority can they have over men who do not hold their leases from them? *The men who have the care of the laborer ought to have the leasing of the land and the inspection of the leases;* and they should be authorized to lease equally to white and to colored people."

Such a statement is an argument.

This conclusion has the support also of General Banks, in a letter addressed to one of the Freedmen's Commission. Here are his words: —

"The assignment of the abandoned or forfeited plantations to one department of the Government, and the protection and support of the emancipated people to another, *is a fundamental error productive of incalculable evils, and cannot be too soon or too thoroughly corrected.*"

The able and elaborate report from the Freedmen's

Commission, just published, considers this question carefully. Nothing could be more explicit than the following testimony.

"But, in the judgment of the Commission, the most serious error in connection with the present arrangements for the care and protection of these people *arises out of the assignment to a different agency of the care and disposal of the abandoned plantations.* To enter into the detail of all the evils and abuses that have arisen out of this error, and which are unavoidable so long as it continues to exist, would occupy too great a space in this report. Suffice it to say, that it is the source of the greatest confusion and a perpetual collision between the different local authorities, in which not only the emancipated population, but the Government itself, suffers the most serious injuries and losses.

. . . . .

"And this is the purport of all the testimony which the Commission has been able to obtain, not in the department of the Gulf only, but everywhere, in relation to this matter.

"The unhesitating judgment of every person, official or other, not interested in the opportunities it affords for peculation, with whom we have consulted, coincides with that of General Banks. All, without exception, declare that no system can avail to effect the great objects contemplated that does not assign to one and the same authority the care and disposal of the abandoned plantations and the care and protection of the emancipated laborers who are to cultivate them.

"*And, after the most thorough investigations, I am authorized in saying that this is the deliberate judgment of the Commission.*"[1]

It was on this ground of reason, and yielding to the

[1] Supplemental Report to the Secretary of War, by James McKaye, Special Commissioner, pp. 28, 29.

influence of such authoritative opinions, that the Committee were led to believe that there was no alternative on this practical question.

In the course of their inquiries the Committee sought the opinion of the Secretary of the Treasury. With the heavy burdens of his department resting on his shoulders, he does not desire any additional labor; but he does not conceal his conviction that the care of the freedmen must for the present be associated with the care of the lands. He would be glad to be relieved of all the responsibilities connected with the subject, but he hopes that it will not be divided between two different departments. In that event it is feared that there will be little good from either.

I have dwelt with some minuteness on this question, because it seems to be the practical point on which there may be difference of opinion. Already gentlemen have taken sides, and newspapers also. I regret this difference, but I trust that a calm and dispassionate consideration of the subject will render it innocuous. The first thought of all should be for the freedmen.

There is another point, which ought not to be passed over in silence, arising from the just desire to protect the freedmen from any system of serfdom or enforced apprenticeship. It is well known that among former slave-masters there are many who continue to count upon appropriating the labor of their slaves, if not under the name of Slavery, at least under some other system by which freedmen shall be effectually held to service. This very phrase "held to service," standing alone, is the pleonastic definition of Slavery itself. One of these slave-masters, in a public speech,

said: "There is really no difference, in my opinion, whether we hold them as absolute slaves or obtain their labor by some other method. Of course we prefer the old method; but that question is not now before us."[1] Such barefaced avowals were not needed to put humane men on their guard against the conspiracy to continue Slavery under another name.

The bill before the Senate provides against any such possibility by requiring that the assistant commissioners and local superintendents shall not only aid the freedmen in the adjustment of their wages, but shall take care that they do not suffer from ill-treatment or any failure of contract on the part of others, — and also that the contracts for service shall be limited to a year. The latter provision is so important that I give it precisely.

"*Provided*, That no freedmen shall be held to service on any estate above mentioned otherwise than according to voluntary contract, reduced to writing, and certified by the assistant commissioner or local superintendent; nor shall any such contract be for a longer period than twelve months."

Here is a safeguard against serfdom or enforced apprenticeship which seemed to the Committee of especial value. In this respect the House bill was thought to be fatally defective, inasmuch as it interposed no positive safeguards.

I do not know how extensive the desire may be to set Slavery again on its feet under another name. But when we take into consideration the selfish tendencies of business, the disposition of the strong to appro-

[1] Speech of Judge Humphrey, at a Union meeting at Huntsville, Alabama: McKaye's Supplemental Report, p. 23.

priate the labor of the weak, and the reluctance of slave-masters to renounce habitual power, I have felt that Congress would fail in its duty, if it did not by special provision guard against any such outrage. There must be no Slavery under an *alias*. This infinite wrong must not be allowed to skulk in serfdom or compulsory labor. "Once free, always free," — such is the maxim of justice and jurisprudence. But any system by which the freedmen may be annexed to the soil, like the old *adscripti glebæ*, will be in direct conflict with their newly acquired rights. They can be properly bound only by contract; and considering how easily they may be induced to enter into engagements ignorantly or heedlessly, and thus become the legal victims of designing men, it is evident that no precautions in their behalf can be too great.

It is well known that in some of the British West Indies an attempt was made, at the period of emancipation, to establish a system of apprenticeship, which should be an intermediate condition between Slavery and Freedom. But the experiment failed. In some of the islands it was abandoned by the planters themselves, who frankly accepted emancipation outright; and in all it finally fell before the irresistible eloquence of Brougham. Here is a passage from one of his speeches.

"They who always dreaded Emancipation, who were alarmed at the prospect of negro indolence, who stood aghast at the vision of negro rebellion, should the chains cease to rattle or the lash to resound through the air, gathering no wisdom from the past, still persist in affrighting themselves and scaring you with imaginary apprehensions from the transition to entire freedom out of the present intermediate

state. But that intermediate state is the very source of all their real danger; and I disguise not its magnitude from myself. You have gone too far, if you stop here and go no farther; *you are in imminent hazard, if, having loosened the fetters, you do not strike them off*, — if, leaving them ineffectual to restrain, you let them remain to gall and to irritate and to goad. Beware of that state, yet more unnatural than slavery itself, *liberty bestowed by halves.*

. . . . .

"I have demonstrated to you that everything is ordered, every previous step taken, all safe, by experience shown to be safe, for the long desired consummation. The time has come, the trial has been made, the hour is striking; you have no longer a pretext for hesitation or faltering or delay. The slave has shown, by four years' blameless behavior and devotion to the pursuits of peaceful industry, that he is as fit for his freedom as any English peasant, ay, or any lord whom I now address. I demand his rights, — *I demand his liberty without stint*, — in the name of justice and of law, in the name of reason, in the name of God, who has given you no right to work injustice." [1]

But surely there is no need of eloquence or persuasion to induce you to set your faces like flint against any such half-way system. Freedom already declared must be secured completely, so that it may not fail through any pretension or fraud of wicked men. The least that can be done is what is proposed by your Committee.

Much more might be said on the whole subject; but I forbear. I have opened to consideration the two principal questions. If the Senate agree with the Committee, first, on the importance of keeping the superintendence

[1] Speech in the House of Lords on the Immediate Emancipation of the Negro Apprentices, February 20, 1838; Works (London and Glasgow, 1857), Vol. X. pp. 276–279.

of the freedmen and of lands in the same hands, so as to avoid local conflict and discord, and, secondly, in the importance of providing surely against any system of serfdom or adscription to the soil, the bill of the Committee must be adopted.

For the sake of plainness, I ask attention to the general character of the bill in its main features.

1. It provides exclusively for freedmen, meaning thereby "such persons as have once been slaves," without undertaking to embrace persons generally of African descent.

2. It seeks to secure for such freedmen the opportunity of labor on those lands which are natural and congenial to them, and on this account it places superintendence of the freedmen in a department having superintendence of the lands.

3. It provides positively against any system of enforced labor or apprenticeship, by requiring contracts between the freedmen and their employers to be carefully attested before local officers.

4. It establishes careful machinery for the purposes of the bill, both as regards freedmen and as regards lands.

But the bill is seen not only in what it does, but also in what it avoids doing.

It does not undertake too much. It does not assume to provide ways and means for the support of the freedmen; but it does look to securing them the opportunities of labor according to well-guarded contracts and under the friendly advice of agents of the Government, who will take care that they are protected from abuse of all kinds.

It is the declared duty of the agents "to protect

these persons in the enjoyment of their rights, to promote their welfare, and to secure to them and their posterity the blessings of liberty." Under these comprehensive words all that is proper and constitutional is authorized for their welfare and security, while labor is made to go hand in hand. Thus far in the sad history of this people labor has been compelled by Slavery. But the case at last will be reversed. It is Liberty that will conduct the freedman to the fields, protect him in his toil, and secure to him all its fruits.

In closing what I have to say on this subject, allow me to read the official testimony of the Commission on Freedmen, appointed by the Secretary of War, in their recent report.

"For a time we need a Freedmen's Bureau, — but not because these people are negroes, only because they are men who have been for generations despoiled of their rights. The Commission has heretofore — to wit, in the Supplemental Report made to you in December last — recommended the establishment of such a bureau; and they believe that all that is essential to its proper organization is contained, substantially, in a bill to that effect, reported, on April 12, from the Senate Committee on Slavery and Freedmen."[1]

This is the bill before us.

It is for the Senate to determine, under the circumstances, what it will do. My earnest hope is that it will do something. The opportunity must not be lost of helping so many persons now helpless, and of aiding the cause of reconciliation, without which peace cannot be assured. In this spirit I leave the whole subject to

[1] Final Report of the American Freedmen's Inquiry Commission: Senate Documents, 38th Cong. 1st Sess., No. 53, p. 109.

the judgment of the Senate. If anything better than the work of the Committee can be found, I hope it will be adopted; meanwhile I ask you to accept what is now offered.

After various amendments moved by Mr. Sumner, the bill was violently opposed by Mr. Richardson, of Illinois. In the course of his speech the following colloquy occurred.

Mr. Richardson. The Senator from Massachusetts will be able to carry his proposition next winter, if the people can be deceived to reëlect Lincoln.

Mr. Sumner. I hope this summer.

Mr. Richardson. You have no show in the world this summer. If you could carry that proposition now, you could not carry one of the Northwestern States this fall.

June 14th, the consideration of the bill was renewed, when Mr. Hendricks, of Indiana, spoke against it. He moved to strike out "Treasury Department," and insert "Department of the Interior." On this motion Mr. Sumner said: —

The point to which the Senator directs attention was considered very carefully by the Committee. Were this a moment of peace, I believe the Committee would have been unanimous in the idea of the Senator. Indeed, it seems to me, the reasons for it in time of peace are unanswerable. It is in the Interior Department that we place the Bureau of Indian Affairs, the Bureau of Pensions, the Bureau of Patents, the Bureau of Public Lands; and a Bureau of Freedmen would be more or less germane to all these interests. It would naturally be lodged in the same department with them. Naturally it belongs to the Interior; there can be no question about it. The Senator, therefore, is perfectly right, when he makes the suggestion. But the Senator should take into consideration that at this moment we are acting provisionally, and not permanently, — under sugges-

tions growing out of the present state of the country, and not as if we were in a condition of permanent peace.

In placing the bureau where the Committee have placed it, they followed what seemed the necessities of the case. Congress, by previous legislation, has practically placed the bureau in the Treasury Department, — or rather it has rendered it necessary that it should be placed there, unless we are willing by legislation to create a conflict between two different departments. Congress has already placed in the Treasury Department the control of the business relations between the Rebel States and the Loyal States, and also the control of the abandoned lands and plantations in the Rebel States. Now, as I tried to exhibit the other day, when I opened this question, the main interest for the moment is how to bring the freedmen in connection with the lands. If you go beyond that, if you undertake to provide means for their support, you assume what I believe the country does not expect you to assume, and what I believe those who have the welfare of that people most at heart do not venture to counsel. We desire to secure for them opportunity, — opportunity to work: that is the main point, and that can be secured only by bringing them in connection with the lands. The care and guardianship of the lands where it is proposed to place the freedmen have already, by previous legislation, I repeat, been lodged with the Treasury Department. Therefore, naturally and logically, it seems to follow, unless you are willing to create a conflict between two different departments, or between the agents of two different departments, that you should place the care of the freedmen in the same department.

Sir, I am not alone in this view. The other day I presented it, and gave opinions on the subject, to which I now call attention: one is a private letter from Hon. Robert Dale Owen, and the other is part of the Report of the Freedmen's Commission, appointed by the Secretary of War to consider, among other questions, that now before the Senate.[1]

The amendment of Mr. Hendricks was rejected. Mr. Willey, of West Virginia, then spoke against the bill. He said: "In my opinion, after as close and careful an examination of this bill as I have been able to give to it, its proper title would be 'A bill to reënslave freedmen.' . . . . Sir, in the name of Liberty and Emancipation I protest against the passage of any such bill by the American Senate."

June 15th, the debate was continued, when the bill was opposed by Mr. Saulsbury, of Delaware, Mr. Hicks, of Maryland, and Mr. Grimes, of Iowa. Mr. Ten Eyck, of New Jersey, spoke in favor of it. Mr. Carlile, of Virginia, moved to postpone its further consideration to the first Monday of December next, which was lost, — Yeas 13, Nays 23. Mr. Grimes was particularly severe in his criticism, which drew from Mr. Sumner the following reply.

I AM sorry that I am obliged to say another word in this debate. I had hoped to be excused. But the remarks of the Senator from Iowa [Mr. GRIMES] leave me no alternative.

I am not astonished at the opposition this bill has encountered from Senators over the way. It is their vocation to oppose every such measure, and to give it, if possible, a bad name. They believe in Slavery more or less, and will not do anything to remove it or to mitigate its terrible curse. There is the Senator from West Virginia [Mr. WILLEY], who gives us smooth words for Freedom, with boasts of the slaves he has emancipated, and then straightway, by voice and vote, sustains slave-

[1] See, *ante*, pp. 487, 488.

hunting, and, if possible, worse still, startles the Senate by a menace that slaves set free by Act of Congress will be reënslaved by States restored to the Union. That this Senator should attack a bill for a Bureau of Freedmen is perfectly natural; nor am I astonished that he should misrepresent its character. But I cannot conceal my surprise at the course of the Senator from Iowa, who I know has no love for Slavery, and no congenital, persistent, and rooted prejudices against the colored race. If the Senator from West Virginia spoke naturally, allow me to say that my friend from Iowa spoke unnaturally.

Sir, the Senator has not done justice to the bill he undertook to criticize. It was evident that he spoke hastily, without having even read it. At least, this is not an improper assumption, when we consider some of his criticisms. It will be remembered how promptly I corrected him, while he was picturing the Assistant Commissioners as so utterly without restraint that they were not even obliged to make reports. I rose and read the clause in the bill expressly requiring not only "quarterly reports," but "other special reports from time to time." The Senator, surprised by this provision, replied, that it was at the close of the bill, and was evidently an afterthought. This, again, was a mistake. Had he read the bill carefully, he would have found, that, whatever its merits in other respects, everything is introduced in its proper place, and this provision is no exception. There is no afterthought in the bill. The Senator then complained that the Assistant Commissioner was not obliged to give a bond. Here, again, he was mistaken. By an amendment moved by myself this was required. All this was part of the attempt to

show that the bureau had not been planned with sufficient care. Suffice it to say that there is no bureau of the Government constituted with more care, or surrounded with more safeguards against abuse. Much, in the last resort, must be confided to the honesty of public servants; but in the present case they are all placed under the observation of their superiors. Superintendents will be observed by the Assistant Commissioner, who will be observed by the Commissioner, and all will be under the observation of the Secretary of the Treasury, who himself is under the observation of the President; and I need not add that the whole will be subject to the oversight of a humane and enlightened people, awakening daily to a sense of obligation which cannot be postponed.

I am not wrong, then, when I say that the Senator did injustice to the bill in his criticism on its structure and the machinery it establishes. But this was the smallest part of his injustice. He went further, and, following the Senator from West Virginia, asserted that it gave the Commissioner unlimited power and control, so as to hand the unhappy freedman over to Slavery under another name. I looked at the Senator to see if he were really serious, as he made this strange accusation against a measure conceived in a sentiment of humanity and equity, and, by positive provisions, guarding every freedman against the very outrage which the Senator professes to fear. He seemed to be serious, as he repeated the accusation. But as he had erred with regard to the restraints upon the Assistant Commissioners, so he erred in the graver impeachment which he launched here.

The Senator began by saying that the bill, according

to its definition of freedmen, was applicable to all "once slaves," and that even Robert Small, the patriot slave who navigated the "Planter" out of Charleston and gave it to us, would come under its provisions. Very well. Suppose he does. Can he suffer from it? Does he lose anything by it? Can anybody under this bill exercise any power or control over Robert Small? The Senator forgets that the bill assumes that all are free, and in every respect entitled to all the privileges of freemen, — that they are invested with every right the Senator himself possesses, and, if these rights are violated, they may look for a remedy to any court of justice precisely as he could. None of these rights are infringed. On the contrary, the officers under the bill are charged to see that the freedmen are secure in their rights; so that Robert Small himself, if the occasion required, might find aid and protection under it. The bill gives no power to take away or limit existing rights; but it provides additional means for their safeguard, that emancipation may be perfect, so far as possible.

I do not like to take time, especially when I consider that in opening this matter to the Senate I explained the character of the bill and its necessity. I do not pretend that it is perfect; but I beg to assure the Senate that it is the result of the careful deliberations of the Committee. If Senators are disposed to criticize it, or to offer amendments with a view to its improvement, let them do so. But I trust that they will not allow themselves to be carried into any general hostility founded on misconception of its real character. I might remind them again of the large numbers of freedmen — free, thank God, by legislative and executive acts of the United States, but not yet introduced into the new

condition appointed for them — unemployed, suffering, starving, and, with a voice of agony, calling for relief. I might remind them of the inability of private charity, or any effort organized by private individuals, to meet all the exigencies of this unprecedented case, although the generosity of our people is overflowing. I might dwell on the obligation of the nation, reaching everywhere with its hundred arms, to do what inferior charity must fail to do; and I might especially show that it is not enough to strike down the master, but that you must go further, and lift up the slave. But I forbear, contenting myself with reminding you, that, if you oppose legislation to help the freedmen in their rough passage from Slavery to Freedom, you hand over this unhappy people — unhappy for long generations, and not yet conducted into the full enjoyment of their rights — to a condition which I dread to contemplate. They look about and find no home. They seek occupation, but it is not within their reach. They ask for protection, sometimes against former taskmasters, and sometimes against other selfish men. If these are not supplied in some way by the Government, I know not where to look for them. Surely, Sir, you will not hesitate to provide, so far as you can, carefully and wisely, the proper means to secure employment for them during the transition from one condition to another, and, above all, to throw over them everywhere the ægis of Constitution and Law. And such, permit me to say, is the single supreme object of the present bill, which has been so cordially misrepresented by the Senator from West Virginia, and so strangely misrepresented by my friend from Iowa.

I have said that the object was care and protection

for persons actually free, and so regarded, who, from the peculiarity of their condition, might not be able in all respects to secure these without assistance. To this end a central agency is proposed at Washington, with subordinate agencies where the freedmen are to be found, devoted to this work of watching over emancipation, so that it may be surrounded with a congenial atmosphere. Is not the object worthy of support? Who will question it?

The language of the bill describing the functions of the Commissioner is plain and explicit; and yet out of this language, so guarded and so utterly inoffensive, the Senator from Iowa has conjured a phantom to frighten the Senate from its propriety. Why, Sir, if there were anything which by possibility could justify the fears of the Senator, if there were anything which even the most lively imagination could exaggerate into a lack of care and protection, then I should be the first to denounce it, and to ask forgiveness for an unconscious aberration. But there is absolutely nothing; and if you listen to the bill, you will agree with me.

I begin with the very words which to the Senator from Iowa were so alarming: —

> "The Commissioner, under the direction of the Secretary of the Treasury, shall have the general superintendence of all freedmen throughout the several departments."

Here are duties imposed upon the Commissioner; but there is no power or control over the freedmen. Calling a man superintendent gives him no power except in conformity with law; but all the laws, general and special, are for Freedom. And yet the Senator has repeated, again and again, that this was a grant of unlimited

power and control over the freedmen. To his mind here was an overflowing fountain of tyranny and wrong.

Mr. Grimes. Will the Senator tell the Senate what is meant by it?

Mr. Sumner. With great pleasure; and if I can have the candid attention of my friend, I believe that he and I cannot differ, for I will not doubt that we have the same object at heart. Obviously the language indicates in a general way the character of the duties to be performed. They are duties of superintendence, but we are to look elsewhere for the extent of the duties; and the words which follow in the same section show something of their nature. Thus: —

"And it shall be his duty especially *to watch over* the execution of all laws, proclamations, and military orders of emancipation, or in any way concerning freedmen."

There, Sir, is the first glimpse of this tyrant. Mark, Sir, there is not one word of power or control over the freedmen, but duties solemnly imposed, all in behalf of Freedom. What next?

"And generally, by careful regulations in the spirit of the Constitution, *to protect these persons in the enjoyment of their rights*, to promote their welfare, and to secure to them and their posterity the blessings of liberty."

Here, again, are duties of the Commissioner; but there is not one word conferring power or control over the freedmen. The main object is protection in the enjoyment of their rights, — inborn, but new-found. This is to be crowned by such watchfulness as will promote their welfare and secure to them and their posterity the blessings of liberty; and all this is to be ac-

cording to "careful regulations." To find tyranny in this provision the Senator must be as critical as the German theologian who found heresy in the Lord's Prayer. I do not go to the dictionary for the meaning of superintendent. This is needless. Obviously, the superintendent must superintend according to law; and since this is now for Freedom, whatever he does must be for Freedom likewise. He can do nothing without this inspiration. The function of superintendence is not applicable exclusively to this case. It is of common occurrence. There is a superintendent of emigrants; but nobody supposes that he can do anything with regard to emigrants except in conformity with law. The mayor of Washington is, in a certain sense, a superintendent of the Senator and myself, as we walk the streets or lie down at night in our houses, bound to see that we are protected from outrage and robbery. And the Vice-President, or the President of the Senate, is a superintendent of this Chamber, bound to see that the rules of Parliamentary Law are observed. But the Senator would not think of attributing to either of these functionaries that "unlimited control and power" which he dreaded in the superintendent of freedmen, — bound to see that freedmen are protected in their rights. And yet it exists in one case just as much as in the other.

I think, Sir, that after this explanation there can be no difficulty in answering the inquiry of the Senator. By "superintendence of all freedmen" is meant that watchfulness of their rights and interests consistent with laws, general and special, for their protection, welfare, and liberty, so that they may be helped to employment and be guarded against outrage. The ob-

ject is good. What other word would the Senator employ to designate it? How would he describe the humane function of the Commissioner? He is versed in language. Will he supply any term more apt? I invite him to do it, and shall gladly accept it. Since we seem to concur in the object, let there be no difference on account of words. All I desire is something that shall supply help and protection. For this I cheerfully sacrifice the rest. And permit me to say, I have misread this bill, if there is a single word in it, from beginning to end, which can give the most remote apology for any other idea.

I have thus far only glanced at a single section. Look further. I pass for the moment the next section, and go to the sixth, which describes some of the duties of the "Assistant Commissioners and local superintendents." It begins by declaring that they —

"Shall act as *advisory guardians to aid* the freedmen in the adjustment of their wages, or, where they have rented plantations or small holdings, in the application of their labor."

Observe, if you please, the friendly service to be performed. Not in this way do tyrants or slave-masters wield a wicked power. Here is advice, guardianship, and the adjustment of wages, — all inconsistent with Slavery in any of its pretensions. What next?

"That they shall take care that the freedmen do not suffer from ill-treatment or any failure of contract on the part of others, and that on their part they perform their duty under any contract entered into by them."

Mark, again, the friendly service. Here is another duty cast upon these officers.

MR. GRIMES. How is that to be enforced? Suppose they will not work, — will not fulfil their contracts?

MR. SUMNER. The duty of these officers is "advisory." They are not invested with power to enforce any provisions, unless by court of law or some other tribunal. The freedmen are entitled to all the rights of freemen, just as much as the Senator. Curiously, the Senator does not seem to have purged his mind of the idea that these men, in some way or other, have not yet ceased to be slaves, —

MR. GRIMES. No.

— an assumption which, however natural in the Senator from West Virginia, is not natural in my friend from Iowa. Let him recognize them as free, like himself, and he will see that there is no remedy open to him which is not open to them, and that any outrage upon them is, in point of law, the same as if inflicted upon himself.

MR. HARLAN. I desire to ask the Senator if there are courts of law in existence in these Rebel States before whom the parties may appear.

MR. SUMNER. I am afraid that courts of justice in those States are not yet in perfect operation. But such as they are, they will be open to every freedman. On this point there can be no question.

The next words show what shall be done by these officers to promote the administration of justice: —

"They shall further do what they can as *arbitrators* to reconcile and settle any differences in which freedmen may be involved, whether among themselves or between themselves and other persons."

Here is the duty of arbitrator and peacemaker, but no power or control. And this duty is applicable to differences of all kinds, where the freedmen are parties. Nothing can be more humane or less tyrannical. This is not all.

"In case such differences are carried before any tribunal, civil or military, they shall appear as next friends of the freedmen, so far as to see that the case is fairly stated and heard. And in all such proceedings there shall be no disability or exclusion on account of color."

If not "arbitrators," then the officers are to be "next friends," to aid the freedmen in any litigation into which they may be drawn. Very little tyranny here. And this service is to be rendered in any tribunal, "civil or military"; so that, where the civil courts are closed, the freedmen may obtain justice in any military tribunal. But whether in a civil or military tribunal, there is to be no disability or exclusion on account of color. When we consider how this disability and exclusion have been the badge of Slavery and its pretensions, we may find in their positive prohibition a new token of the spirit in which this bill is conceived. Very little tyranny here.

Mr. Grimes. But, Mr. President, the case that was put by me was not where there was a controversy between the colored man and some third party, but where the Commissioner attempted to enforce the obligation of duty upon the colored man. . . . . Now I want to know of the Senator if a Commissioner who undertakes to carry out the provisions of this bill may not, under the third section, avail himself of the military authority that may be in the department to enforce obedience, — and if he thinks it would be doing justice to the colored men in the department to leave them to the

military control of the Commissioner, of whom we know nothing, and about whom we do not know whether he sympathises with the colored man or not. Is it right to leave these colored men to the military control of this Commissioner in order to enforce the obligation to labor?

MR. SUMNER. The Senator calls attention to another section, where it is provided that "the military commander within any department shall, on the application of the Assistant Commissioner thereof, supply all needful military support in the discharge of the duties of such Assistant Commissioner"; and he inquires if this does not authorize the Assistant Commissioner to use military power in making freedmen work. Let me say at once that the criticism of the Senator is absolutely novel. If the clause to which he refers could be employed to any such purpose, I beg to assure him it was not anticipated by the Committee. It was intended for a very different purpose, and in the interest of the freedman. Here, again, I remind the Senator that nothing can be done by any officer, military or civil, toward a freedman, which cannot be done toward any other citizen. If this military power can be used against one, it can be equally used against the other. The occasion for this power seemed obvious. It was supposed that in the Rebel States there might be exposed districts where the plantations would be subject to incursion or ravage from the enemy, by which labor would be obstructed or disturbed, unless military protection were at hand. To remedy evils of that character this provision was introduced. Such is the object sought to be accomplished. It is protection, in the spirit of the whole bill, and nothing else. If by any possibility there can be the chance of an abuse of this pow-

er, beyond what is incident to every trust, I shall be glad to take advantage of the criticism of the Senator, and amend the bill so that the evil he snuffs afar shall not be permitted to arrive.

The Senator cannot bear the thought of freedmen exposed to the tyranny of military power. But does he not forget that at this moment they are subject to this tyranny? It is to remove them from all this arbitrary control and uncertain protection that we establish a bureau, which shall be an agency of the civil power, charged to surround the freedmen with every safeguard the Constitution and laws can supply. Show me any provision in one or the other for the protection of human rights, and I claim it at once for the freedman against any oppressor, whatever his office or name.

Let the Senator bear these things in mind, and give us the advantage of his counsels. I shall welcome from him any suggestion, any proposition, any criticism, calculated to promote the object of the bill. The more he makes, the better. Let him be no niggard. But I trust he will pardon me, if I complain of inconsiderate assault, which, as it seems to me, can have no other effect than to injure the cause.

I have not done with the criticism of the Senator. It was on the fifth section, concerning the labor on abandoned plantations, that he bent his chief force. In the provisions of that section he found a new system of Slavery: sometimes it was Slavery outright, and sometimes it was Peon Slavery. Senators who did me the honor of listening to my remarks at the beginning of this debate will remember how I dwelt upon the importance of guarding against any revival of Slavery under any other name, whether of apprenticeship or

adscription to the soil; and they may remember, perhaps, how I explained the impossibility of any such occurrence under the present bill, and showed that the freedman was guarded at all points. And yet, in the face of this exposition, and of the positive text, — better than any exposition, — the cry is sounded, that the liberty of the freedman is in danger. The Senator read this section at length, and then sounded again particular clauses and phrases, striving to interpret them for Slavery. I will not read it at length; nor will I dwell on the first part of the section. Suffice it to say, that, so far as it describes the lands to be taken for occupation, it follows substantially the text of the order from the War Department, by which "all houses, tenements, lands, and plantations, except such as may be required for military purposes, which have been or may be deserted and abandoned by insurgents within the lines of the military occupation," are placed under the supervision and control of the supervising special agents of the Treasury Department. Under this order the Secretary of the Treasury has been acting for several months, — doing with these lands precisely what the Senator so vehemently condemns. The present bill, so far as concerns the power of the Commissioner over the lands, does little more than reduce the order of the War Department to the text of a statute, thus imparting to it a certain legality which it does not now possess.

Passing from the lands to be occupied under the bill, the Senator next pictures the terrible fate of the freedmen laboring on these lands in pursuance of careful contracts. There seems no limit to the Senator's anxiety lest they should be bound in Slavery. I welcome his generous solicitude. But I pray that he will not allow

it to mislead his judgment or prevent him from seeing the case in its true character. Surely he must be unduly excited, or he could not find danger in these words: —

"In case no proper lessees can be found, then to cause the same to be cultivated or occupied by the freedmen, on such terms, in either case, and under such regulations, as the Commissioner may determine."

"What a frightful power!" exclaimed the Senator. But why? Here is no power or control over the freedmen, but simply over the lands, which the officers cause to be cultivated or occupied. These officers are representatives of the National Government, to which the lands belong for the time being, and, in determining the terms and regulations under which they are to be cultivated or occupied, they do no more than is done by the Senator with regard to the lands he is so happy in owning. The Senator fixes the terms and regulations under which his lands are leased or cultivated: does he not? And he would be surprised, if any person called in question his rights in this regard; especially would he be surprised, if any person undertook to infer that the freedom of laborers upon his lands could be compromised by any terms or regulations he might choose to make. But there is no power he may exercise over his own lands that may not now be exercised by the Government. In each case the laborer must be treated as a freeman. The Senator seems to imagine that there is power or control over the freedmen conferred by these words. Here is his mistake. The power and control are over the lands, not over the freedmen. There is not a word in the clause that can be tortured into any such idea. I challenge the Senator to point it out.

Thus far I have considered this clause, which according to the Senator is so terribly pregnant, without alluding to the express limitation following in the same section. Even without this limitation it is clear and blameless. But the Committee, in order to make assurance doubly sure, and to set up an absolute impediment against any abuse, have added the following proviso: —

"*Provided*, That no freedmen shall be held to service on any estate above mentioned otherwise than according to voluntary contract, reduced to writing, and certified by the Assistant Commissioner or local superintendent; nor shall any such contract be for a longer period than twelve months."

And yet, in the face of this proviso, the Senator sees danger. Nobody can be found on the lands except in pursuance of voluntary contract, which must be reduced to writing and certified by an officer of the Government. Nor is this all. The contract is not to be for a term beyond twelve months; so that, by no excuse, and by no exercise of power, can the freedman be put even under a shadow of control beyond this brief term. He is in all respects a freeman, laboring on lands according to careful contract for a limited period. And yet the Senator calls this beneficent arrangement Slavery, and then, changing the name, he calls it Peonage. Sir, the Senator has an imperfect conception of that peonage which is indefinite service, or of that slavery which is service for endless generations, if he undertakes to liken employment in pursuance of contract most carefully guarded for a term of a few months to either of these wretched conditions.

But all this is only part of the mistake in which the

Senator has proceeded from beginning to end. I am at a loss to account for it. I do not understand it. That I regret it most sincerely I need not say. I counted upon his charitable regard for this bill. I felt sure of his sympathy with its general objects. I do not renounce the hope of this sympathy now. But I cannot forbear saying, that, to my mind, the Senator throws himself in the way of a humane undertaking, and practically abandons the claims of the oppressed race to which he and I both owe service. Long have they suffered, much have they been abused, wearily have they journeyed through life; and now, at last, when Slavery is overturned, and we seek to provide a passage from its torments to a better condition, where labor shall be quickened and protected by Liberty, and where all rights shall be respected, it is hard to find our efforts buffeted by a cross-wind from such an unexpected quarter.

Mr. Grimes and Mr. Willey followed. Between the latter and Mr. Sumner there was an earnest passage.

June 27th, the consideration of the bill was again resumed, when other amendments moved by Mr. Sumner were adopted, among which was the following: —

"And every such freedman shall be treated in every respect as a freeman, with all proper remedies in courts of justice; and no power or control shall be exercised with regard to him, except in conformity with law."

Several Senators spoke.

June 28th, Mr. Wilson, of Massachusetts, moved to strike out "Treasury" and insert "War." Mr. Sumner again explained the preference of the Committee at length, when Mr. Wilson withdrew his motion; but it was afterwards renewed by Mr. Reverdy Johnson, of Maryland, and rejected, — Yeas 15, Nays 20. Other motions ensued, with speeches. The substitute of the Committee having been adopted, the bill was then passed, — Yeas 21, Nays 9, — with the title, "An Act to establish a Bureau of Freedmen."

July 2d, in the House of Representatives, Mr. Eliot, from the Select Committee on Emancipation, moved that the House should not concur with the substitute of the Senate, when, on motion of Mr. Griswold, the whole subject was postponed to December 20th.

December 20, 1864, in the House of Representatives, the bill being under consideration, according to the postponement from the last session, Mr. Eliot, of Massachusetts, Mr. Kelley, of Pennsylvania, and Mr. Noble, of Ohio, were appointed a Committee of Conference. The Senate agreed to the Conference, and Mr. Sumner, Mr. Howard, of Michigan, and Mr. Buckalew, of Pennsylvania, were appointed on the part of the Senate. A new bill was reported. Instead of attaching the bureau to the War Department or to the Treasury Department, an independent department was created, called a Department of Freedmen and Abandoned Lands; but in other respects it was substantially the Senate bill.

February 9, 1865, after debate, the report of the Committee was adopted by the House, — Yeas 64, Nays 62.

February 10th, Mr. Sumner, on the part of the Committee, reported the new bill to the Senate, and on the 13th, in answer to inquiry, explained it as follows.

Mr. PRESIDENT, — I trust that there will be no opposition to this most important, and, as I solemnly believe, most beneficent measure. But I shall be happy to make any explanation with regard to it.

Senators have not forgotten the bill to create a Bureau of Freedmen, which, after careful debate for several days, was passed by the Senate at the close of the last session as a substitute for a House bill. For some time the difference between the two Houses has been under the consideration of a Conference Committee, whose report is now before you. This report embodies substantially the Senate bill, including various propositions moved by different Senators, — among others, that relating to the forfeiture of estates, moved by the Senator from Illinois, [Mr. TRUMBULL], — that relating to the care of freedmen unemployed on the

lands, moved by the Senator from West Virginia [Mr. WILLEY], — and that relating to trials by courts-martial, moved by the Senator from Wisconsin [Mr. DOOLITTLE]. All of the Senate bill, in substance, and generally in language, is preserved, with one single exception. By the Senate bill a bureau was created in the Treasury. The Committee of the two Houses unite in recommending a separate department, holding directly under the President, and therefore free from the control of either the Treasury or the War.

In point of fact, the only substantial difference between the two Houses was on the place where the bureau should be. Each was for a bureau; but one was for it in the Treasury, and the other was for it in the Department of War; and there were strong arguments in favor of each. There were also strong feelings against each. Sometimes it was compendiously said that the freedmen could not be trusted to "the harpies of the Treasury"; and then again it was said, with equal point, that they could not be trusted to "the bloodhounds of the War." These were exaggerations of opposite opinions; but they serve to disclose the irreconcilable discord on the subject.

If the freedmen could have been provided for without reference to the lands, the question would have been relieved from much of its embarrassment. But it was the conviction of the Committee, in which they were sustained by all most familiar with the matter, that the care of the freedmen and the care of the abandoned lands ought to be in the same hands, and that they could not be separated without exposing the freedmen to the mischiefs of two conflicting jurisdictions. But the War Office was not adapted to manage the lands,

as many insisted that the Treasury was not adapted to manage the freedmen.

There was another consideration not without influence. It was felt that each of these great departments of the Government was already so severely burdened, so weighed down with manifold duties, that it was hardly in condition to assume a new trust, so grave and onerous as that proposed.

For such reasons, Sir, and yielding to such influences, the Committee, after careful and conscientious deliberation, determined to recommend a new department, not unlike that of Agriculture, which should not be subject either to the Treasury or to the War. It was felt that in doing this they were doing the best for the cause, and they were not insensible also to the consideration that in this way they might secure a higher order of talent and of character for the service. Men fitted for Treasury agents or fitted for War might not always be the best for the care of freedmen. The man for this humane service should be humane by nature, and should sympathize especially with the race so long neglected and outraged. They must be versed, if I may so express myself, in the humanities of the subject.

After quoting the testimony of experts in favor of an independent department, and of changing the actual system, he concluded.

Such is the system that now exists, under which the freedman is the mere accident of the Treasury. Sir, it is unworthy of the Republic at this great period of our history.

Already the President, by irrepealable proclamation, has declared all slaves free. An Amendment to the Constitution will, in the course of a few weeks, place

their freedom under the sanction of Constitutional Law. But this is not enough. The debt of justice will not be paid, if we do not take them by the hand in their passage from the house of bondage to the house of freedom: and this is what is proposed by the present measure. The temporary care of the freedman is the complement of Emancipation; but the general welfare is involved in the performance of this duty. Without it Emancipation may for a while seem at fault, and the general welfare gravely suffer.

February 14th and 21st, the consideration of the report was continued, — Mr. Davis, of Kentucky, Mr. Hendricks, Mr. Grimes, and Mr. Sprague, of Rhode Island, speaking against it. In reply to Mr. Grimes, who moved the postponement of its consideration, Mr. Sumner again vindicated the measure.

I HOPE there will be no postponement. A motion to postpone at the present time is a motion to kill, and such is the unquestionable object of the Senator from Iowa [Mr. GRIMES]. He is against the bill now, just as he was at the beginning, and is acting according to his sense of duty, when he tries in every way to defeat it. But are Senators whose votes have thus far shown a determination to do something for the freedmen ready to follow his example?

The Senator says he wishes time. Well. But he wishes something more. He wishes to arrest this legislation now at its latest stage. He says that he desires opportunity for debate. But, Sir, has he not had this opportunity in largest measure and to excess? The Senate cannot forget how carefully and conscientiously this question has been considered: first, in a Committee of this body, who gave their best attention to it for weeks, during the last session of Congress; then

for five days and two evenings in the Senate, during which the Senator signalized his opposition; then again in a Conference Committee, the present session, where the whole subject was most thoroughly studied in every possible light; and now in this debate, running over several days, which has already occupied the Senate since the report of that Committee. Surely, if the Senator is not satisfied with the labors of the Committees of this body, he cannot complain that opportunity of debate has been wanting. Sir, he has had the opportunity, and has exercised it.

I am pained by this opposition. It is out of season. I am pained by it especially from the Senator from Iowa. I do not judge him. But he will pardon me, if I say that from the beginning he has shown a strange insensibility to this cause. He is for Liberty, but he will not help us assure it to those who have for generations been despoiled of it. Sir, I am in earnest. Seriously, religiously, I accept Emancipation as proclaimed by the President, and now, by the votes of both Houses of Congress, placed under the sanction of Constitutional Law. But even Emancipation is not enough. You must see to it that it is not nullified or evaded; and you must see to it especially that the new-made freedmen are protected in the rights now assured to them, and that they are saved from the prevailing caste, which menaces Slavery under some new form; and this is the object of the present measure.

Would you know the perils of freedmen ever since Emancipation? Listen, then, to the words of that true patriot, General Wadsworth, of New York, who, after his visit to the Valley of the Mississippi, and personal observation of the freedmen there, testified: —

"There is one thing that must be taken into account, and that is, that there will exist a very strong disposition among the masters to control these people and keep them as a subordinate and subjected class. Undoubtedly they intend to do that. I think the tendency to establish a system of serfdom is the great danger to be guarded against. I talked with a planter in the La Fourche district, near Thibodeauville. He said he was not in favor of secession; he avowed his hope and expectation that Slavery would be restored there in some form. I said, 'If we went away and left these people now, do you suppose you could reduce them again to slavery?' He laughed to scorn the idea that they could not. 'What!' said I, 'these men who have had arms in their hands?' 'Yes,' he said; 'we should take the arms away from them, of course.'"[1]

But this emphatic attestation is simply in harmony with accumulated testimony from other quarters. The freedmen, rejoicing in recovered rights, must for a while be saved from the traditional harshness and cruelty to which for generations they have been exposed. Call it protection, — call it what you will: the power of the Government must be to them a shield. And yet you hesitate.

The Senator from Iowa renews the objections he made at an earlier stage. It will not be forgotten that he most earnestly protested against the bill, as giving to persons a control of the freedman. It was shown, I think, to demonstration, that he was mistaken. But, out of deference to his sensibilities, and that nothing might seem to be wanting, other safeguards were introduced, as amendments, on his motion, or in pursuance of his suggestions. But all this is not enough to secure his favor. He objects still.

[1] McKaye's Supplemental Report to the Secretary of War, p. 24.

Very well. So far as I understand his objection then and now, it is twofold: first, that the freedman is placed under constraint, and that he is not a freeman; and, secondly, that he is treated too much as an infant or a pupil. Now I undertake to say that the objection, in both these forms, is absolutely inapplicable.

The freedman is treated in every respect as a freeman. Again and again in the bill his rights are secured to him. Thus, for instance, in the fourth section, it is expressly provided that "every such freedman shall be treated in all respects as a free man, with all proper remedies in courts of justice, and no power or control shall be exercised with regard to him except in conformity with law." Language cannot go further. In face of these positive words, so completely in harmony with the whole bill, it is vain to say that the freedman is not a freeman. Sir, he is a freeman just as much as the Senator himself, with a title derived from the Almighty, which no person can assail. When the Senator finds danger to the freedman, he consults his imagination, inflamed by hostile sentiments he has allowed himself to nurse.

But the Senator complains that the freedman is treated too much as an infant or a pupil. How? Where? Let him point out the objectionable words. Analyze the bill. The freedmen, it is admitted, are under the general superintendence of the Commissioner. But are we not all under the general superintendence of the police, to which we may appeal for protection in case of need? And just such protection the freedmen may expect from the Commissioner, according to his power. The Senator himself is under the superintendence of

the Presiding Officer of the Senate, whose duty it is to see that he is protected in his rights on this floor. But the Presiding Officer can do nothing except according to law; and the Commissioner is bound by the same inevitable limitations.

But there are regulations applicable to the contracts of the freedman. Very well. Why not? To protect him from the imposition and tyranny of the dominant race, it is provided that "no freedman shall be employed on any estate above mentioned otherwise than according to *voluntary contract*, reduced to writing, and certified by the Assistant Commissioner or local superintendent." Mark the language,—"voluntary contract." What more can be desired? But this is reduced to writing. Certainly, as a safeguard to the freedman, and for his benefit. Then, again, the Assistant Commissioners are to act "as advisory guardians," in which capacity they are to "aid the freedmen in the adjustment of their wages." But do not forget that the freedman is a freeman, and if he does not need such aid or advice, he may reject it, just as much as the Senator himself. Look at other clauses, and they will all be found equally innocent.

But there is the section, originally introduced on motion of the Senator from West Virginia [Mr. WILLEY], providing, that, "whenever the Commissioner cannot otherwise employ any of the freedmen who may come under his care, he shall, so far as practicable, make provision for them with humane and suitable persons, at a just compensation for their services." Here, again, are tyranny and outrage carried to the highest point. But how? The superintendence is that of the *intelligence office*, and everything done is to be "in con-

formity with law." This clause, even if it were in any respect ambiguous, must be ruled by those earlier words which declare that "every such freedman shall be treated in all respects as a free man." What more can be desired? With this rule as a guide, no freedman can suffer in rights.

The strange complaint is made, that this measure is too favorable to the freedman; and, indeed, we have been told that something is needed for the whites. Very well; let it be done. I trust that an enlightened Government will not fail to recognize its duties to all alike. Meanwhile, it is proposed that abandoned lands shall be leased to freedmen, and, if they are not able and disposed to take the lands for a twelvemonth, then they are to be leased to other persons. Reflect that the freedmen, for weary generations, have fertilized these lands with their sweat. The time has come when they should enjoy the results of their labor, at least for a few months. This war has grown out of injustice to them. Plainly, to them we owe the first fruits of justice. Besides, this provision is essential as a safeguard against white speculators from a distance, who will seek to monopolize these lands, with little or no regard to the freedman. Ay, Sir, it is too evident that it is essential as a safeguard against grasping neighbors, who still pant and throb with the bad passions of Slavery.

Mr. President, the objections are vain. The bill is not hurtful to the freedman. It is not hostile to Liberty. Its declared object is the good of the freedman. Its inspiration is Liberty. Look at it as a whole or in detail, and you will find the same object and the same inspiration. It only remains that the Senate should

adopt it, and give a new assurance of justice to an oppressed race. In the name of justice, I ask your votes.

The motion to postpone was rejected, — Yeas 13, Nays 16.

February 22d, the debate was resumed by Mr. Hale, of New Hampshire, in opposition to the report, who was followed on the same side by Mr. Lane, of Indiana, Mr. Davis, of Kentucky, and Mr. Reverdy Johnson, of Maryland. Mr. Conness, of California, spoke in favor of it. Mr. Sumner, in reply, after answering the criticisms on the bill, and adducing testimony to its importance, said : —

I HAVE read these opinions merely to bring home to the Senate, on authoritative grounds, the importance of providing some protection for this large body of freedmen, now justly looking to the National Government as their guardian. That Government has given them the great boon of Freedom. It is for us to go further, and see that Freedom is something more than a barren letter. We must see that it is a fruitful thing, of which they can avail themselves always, and which will be to them everywhere prolific of good.

Mr. President, I did not intend to enter into this discussion this morning. I hoped that a vote might be taken without further debate. I have no desire to discuss it. To my mind the question is perfectly clear. If you reject the pending measure, you voluntarily refuse to carry forward that great act of Emancipation which you have already sanctioned. I say, therefore, for the sake of Emancipation, let the report of this Committee be adopted; and I appeal to you, Senators, do not be afraid to be just.

The vote on the report of the Conference Committee stood, — Yeas 14, Nays 24; so that, though accepted in the House, it was lost in the

Senate. On motion of Mr. Wilson, of Massachusetts, another Conference Committee was ordered, consisting of himself, Mr. Harlan, of Iowa, and Mr. Willey, of West Virginia. The House, on their part, appointed Mr. Schenck, of Ohio, Mr. Boutwell, of Massachusetts, and Mr. Rollins, of Missouri. The Committee reported still another bill, placing the bureau in the War Department.

March 3d, the Senate agreed to the report without a division. In the House, after an ineffectual effort to lay it on the table, it was agreed to without a division, and the same day was approved by the President.

MAKE HASTE SLOWLY: IRREVERSIBLE GUARANTIES.

SPEECH IN THE SENATE, ON THE RECOGNITION OF ARKANSAS, JUNE 13, 1864.

JUNE 10th, Mr. Lane, of Kansas, asked, and by unanimous consent obtained, leave to bring in a joint resolution for the recognition of the Free State Government of the State of Arkansas, which was read, passed to a second reading, and ordered to be printed.

June 13th, he called it up for consideration, when Mr. Sumner made the following speech.

MR. PRESIDENT, — I begin by expressing sympathy with every loyal soul in a Rebel State. Knowing well, from long experience, the cruel rule and domination of Slavery, even in this Chamber, I cannot be indifferent to the trials of loyalty anywhere in these latter days. Show me a man who in a Rebel State stands faithful to the national cause, and I go forth to meet him with heart in hand. To have been true at a time when truth was disowned is enough for honor as well as thanks. But the merits of individuals cannot determine the rights of States.

The case is too important. If individual merits, universally recognized, could save a State to present rights in the Union, Tennessee would not now be a self-condemned exile. There are few anywhere so entirely true as Andrew Johnson, and not one in all the Rebel States

who so bravely encountered the Rebellion face to face. Ten men might have saved Sodom; but he was in himself more than ten men. Besides, he was a Senator on this floor, when the State he represented took its place in the Rebel Confederacy, and joined in war against the National Government; but he stayed behind with his country, and kept his seat here. Persons ignorant of Parliamentary Law have sometimes argued from the latter circumstance that Rebel Tennessee was still entitled to her ancient rights in the Union; but they forget two principles, fixed long ago, beyond all question, in England, the original home of Parliamentary Law: first, that the power once conferred by an election to Parliament is irrevocable, so that it is not affected by any subsequent change in the constituency; and, secondly, that a member, when once chosen, is *member for the whole kingdom*, becoming thereby, according to the words of an early author, not merely knight or burgess of the county or borough which elected him, but knight or burgess of England.[1] If these two principles are not entirely discarded in our political system, then the seat of Andrew Johnson was not in any respect affected by the subsequent madness of his State, nor can the legality of his seat be any argument for the ancient rights of his State.

Nor, again, can the fact that Andrew Johnson has been selected by the Convention of a powerful political party as candidate for the Vice-Presidency be any argument for these ancient rights. It is not necessary that a candidate for President or Vice-President should be-

[1] Whitelocke, Notes upon the King's Writ for choosing Members of Parliament, Vol. II. p. 329. Cushing, Law and Practice of Legislative Assemblies, p. 284.

long to a State. It is enough, under the Constitution, that he is "a natural born citizen." He may be of the District of Columbia, or of a Territory, or of a Rebel State; for these are all equally within the rightful jurisdiction of the United States, and this is enough. The national jurisdiction is permanent and indefeasible.

Therefore, I repeat again, we must look beyond the virtues of individuals. Not all the virtues under heaven can suffice to make a State of this Union, or establish any claim for restoration to ancient rights, where there is failure to comply with essential requirements.

The question under consideration is of momentous interest. It concerns primarily the claim to a seat in the Senate; but it includes also the right of the State of Arkansas to share at this moment in the National Government by representation in Congress, and also the other right of participating in the approaching Presidential election. And behind this great question looms that other, "How shall we treat the Rebel States?" This has already been answered by the House of Representatives in a bill passed by that body; but it has not yet been decided by the Senate.

Unexpectedly, the great question and all the subordinate questions are presented for decision. Not only Arkansas, but Louisiana, and every other Rebel State, will await your judgment. No question of equal importance has been presented since it was determined to meet the Rebellion by arms.

For the present I forbear all minute discussion, either of history or principle. It will be enough, if I state the case, and exhibit the questions involved.

William M. Fishback, a citizen of Arkansas, appears before the Senate of the United States, and claims membership. He asserts that he has been duly chosen to fill the unexpired term of Senator Sebastian, who was expelled in 1861 for complicity with the Rebellion; and he produces a certificate purporting to be signed by the Governor of Arkansas.

Shall this claimant be admitted to a seat in the Senate? Such is the immediate question. But I have said that there are other questions, of the highest importance, which must be considered now and here; for they all enter into the present case. Admitting the claimant, we must also admit that other claimant who has appeared with like credentials as colleague. The question is not, therefore, Shall Arkansas have one vote in the Senate? but, Shall it have two?

Then, again, if Arkansas is fully represented in the Senate, does it not follow that it is to be represented to the same extent in the other House? If represented in that Chamber, such representation must be under the existing Apportionment Act, assigning to Arkansas two Representatives, chosen by districts, without reference to the number of votes polled in either.

One privilege draws after it another. To him that hath shall be given. If Arkansas is admitted to immediate representation in the National Government, this Rebel State, which has overthrown the Constitution within its borders, and assumed the front of war, can participate in the approaching election of President and Vice-President by organizing an electoral college, and, in case the election of either of those great officers should devolve upon Congress, can give a vote affecting the result as weighty as that of Massachusetts, New

York, or Illinois; for, in such case, the vote, which in the Senate is *per capita*, is in the House by States.

Therefore, Sir, I repeat, the decision of the question before us rules all the questions that can arise upon the representation of Arkansas in the Congress of the United States, and also the other question of the participation of Arkansas in the election of President and Vice-President for the term of four years next ensuing. The importance of such a subject cannot be exaggerated. It is important constitutionally, important practically, important also to the peace of the country. It ought to be discussed fully and carefully, especially when it is considered that we are on the eve of a Presidential election which may possibly be affected by our decision.

Mr. President, I am against the admission of Arkansas to representation in the National Government *at this time and under existing circumstances.* There may be a time, and there may be circumstances, when such representation will be proper; but clearly at this moment it is improper, unreasonable, and dangerous. The reasons are obvious.

First. The proposed representation is that of a *minority*, not only of the people, but even of the ancient voters of Arkansas. It is superfluous to say that such representation is inconsistent with republican principles, and can be vindicated only by overruling necessity. But this point becomes of peculiar importance, when it is considered that the minority asking representation has acquiesced in rebellion, and, still further, that some of those composing the minority have actively assisted the public enemy. Look at the facts.

The authority and jurisdiction of the United States were wholly overthrown and subverted in Arkansas. By action of the State Legislature, and of a Convention called by this Legislature, followed by a popular vote, the State was made *de facto* a member of the Rebel Confederacy. However much we may deny the rightfulness or the legality of the proceeding, there is no question with regard to the fact. This at least is undeniable, and constitutes an essential ingredient in the case. As a fact it must be recognized, whatever the consequences, precisely as truth is recognized. But this unquestionable fact was followed by a general acquiescence of the people of Arkansas; so that this State became in fact, as in name, a Rebel State, linked with other Rebel States arrayed in arms against the National Government.

At last, after much bloodshed and various vicissitudes, through the exertion of the military power of the United States, a portion of the territory of this State has been rescued from Rebel domination, and brought within the lines of our army. The rest will follow, in process of time, and after further bloodshed, until eventually the whole State will be rescued from Rebel domination, and brought within the lines of our army. Even then we shall be obliged to wait for tokens of returning loyalty also. But at the present moment the possession of the State is still contested by opposing forces, and a minority only has signified adhesion or readhesion to the National Government. This objection, of course, may be removed by time; but it existed in full force at the election of the claimant, and is decisive upon the question before us.

Unquestionably, it is according to the genius of our

Government that the *majority* should rule. A majority is the natural base of a republic. To found a republic on a minority is scarcely less impracticable than to stand a pyramid on its apex.

Secondly. The proposed representation of Arkansas in the Senate is unjust and inequitable in relation to the representation of the loyal States; and if extended to representation in the House of Representatives and in the Electoral Colleges, it becomes still more unjust and inequitable. By the original terms of union, the other States have agreed that *the whole people* of Arkansas shall have two Senators, and Representatives according to a fixed proportion,—and also electoral votes for President and Vice-President according to the number of Senators and Representatives. Now it would be manifestly wrong toward all the loyal States, if not a fraud upon their rights, to assign such representation and such privilege to a *fraction* of the people of Arkansas, constituting a small minority, so that, on all questions of legislation, of treaties, or of appointments, in the discharge of legislative, diplomatic, and executive trusts, this small minority would wield in the Senate all the power of a loyal State, while in the choice of President and Vice-President it might turn the scale.

Thirdly. The military occupation of Arkansas, and the unsettled condition of the community there, cannot be forgotten, when we are considering whether to admit the representatives of a newly organized *civil government* in that State. Military occupation is practically inconsistent with civil government. Even if the former does not absolutely exclude the latter, yet it is evident that it must exercise a controlling influence. It is impossible in time of war to preserve the conditions of

peace,—especially in time of civil war. Military power, when engaged in subduing rebellion, cannot be insensible to political forces. It must win what it cannot overcome. From the nature of the case, ordinary political conditions are disturbed or subverted, and electoral power loses its essential character, so as to be no longer entitled to that peculiar respect which it enjoys under American institutions. These observations I apply solely to a theatre of war; and I insist, that, so applied, they are true, just, and indisputable.

But, in point of fact, there is another and kindred force, which conspires with the former to disturb suffrage in Arkansas: I mean that proceeding from incursions and hostile operations of the enemy. These prevent elections in some parts of the State, and render them partial in others; and this unhappy condition must continue so long as war prevails there. That I do not exaggerate these perils, let me quote the testimony of General Gantt, a citizen of Arkansas, who participated in the recent election. "Thousands," says he, "when they started to the polls in the morning, felt that at nightfall, when they returned, it might be to a mass of charred and smoking ruins and to a beggared and impoverished family; and yet other thousands knew that the knife of the murderous crew of Shelby, Marmaduke, and others was whetted for their throats, and might do their execution before the polls were reached; and all knew, that, should the tide of war surge backward over our State, instead of being simply ordered out of the lines, bankruptcy, dungeons, chains, and an ignominious death awaited them." This picture, which is unquestionably authentic, while it interests us for the heroic sufferers, testifies conclusively how incapable Arkansas

is at this moment to bear the burdens and discharge the trusts of a State.

Fourthly. The present organization in Arkansas, seeking representation on this floor, is without that *legality of origin* required by the American system of government. It is revolutionary in character. Nay, more, it may all be traced to *a military order.* Clearly, this incongruity will not be tolerated. *A new civil government,* to be recognized as a State of this Union, *cannot be born of military power.* Congress has jurisdiction over all those States in which loyal governments have been overturned; and this jurisdiction furnishes a natural, obvious, and constitutional origin for the new government. Without it, I am at a loss to see how *the connecting link of legality* can be preserved between the old and the new. This is not the first time in our national history that Congress has stood between the old and the new. Such is its natural place and function. At the separation of the Colonies from the mother country, it interfered by formal resolution to indicate the process by which the new governments should be constituted, although the Tories of that day doubted the power. According to this example, sustained by congenial principles, Congress must now set the new government in motion, and infuse into it the vital force found in liberty regulated by law.

Fifthly. Arkansas is at this moment shut out from *commercial intercourse* with the loyal States, under the Proclamation of the President of 16th August, 1861, in pursuance of the Act of Congress of 13th July, 1861. By this Proclamation it is placed on the list of States declared in "insurrection against the United States; and all commercial intercourse between the same and

the inhabitants thereof and the citizens of other States and other parts of the United States is unlawful, and will remain unlawful until such insurrection shall cease or has been suppressed"; and all goods, chattels, wares, and merchandise, coming from any of the enumerated States and proceeding to any other State by land or water, are made liable to forfeiture.[1] And yet Arkansas, while still under the ban of a Presidential proclamation and a Congressional statute establishing non-intercourse with other States, asks representation in the National Government. Disqualified for trade with other States, it asks to govern them. The old practice is to be reversed. Thus far in history trade has preceded political power; now political power is to precede trade. Arkansas cannot send her merchants into the loyal States to buy and sell. Can she send representatives into this Chamber to vote? Can she send electors into the Electoral College to choose a President?

Such, Mr. President, are five distinct reasons, obvious to the most superficial observer, against recognizing any representation from Arkansas at this time: first, because the representation is founded on a minority; secondly, because any such representation, unjust in itself, is especially unjust toward the loyal States; thirdly, because the military occupation of Arkansas, and its exposed condition, are inconsistent with civil government; fourthly, because the present organization of Arkansas is without that legality of origin required by American institutions; and, fifthly, because it is absurd to admit a State to representation which is still, by solemn proclamation, shut out from commercial intercourse with the loyal States.

[1] Statutes at Large, Vol. XII. p. 1262.

The argument thus far applies to the present case, without touching that other question, sometimes discussed, whether, in point of fact, Arkansas is still a State of the Union. Evidently, Arkansas may have preserved her place in the Union, and yet not be entitled at this moment to representation. She may be a State, but in a condition of political syncope or suspended animation. Or she may be under such abnormal influences as to render her, for the time being, incompetent to perform the functions of a State.

But if Arkansas, by reason of her Ordinance of Secession, and open participation in the war against us, has lost a place in the Union, it is manifest that the Senate cannot now admit the claimant to a seat as one of its members; nor can it admit him at all, until Congress, by joint vote, has restored the State to its original position. The power to admit States into this Union, and, by consequence, the power to *readmit* them, are vested in Congress, to be exerted by joint resolution or act, with the concurrence of both Chambers and the approval of the President. Here I content myself with a statement. For the present I waive all consideration of the *status* of the seceded States. The argument is complete without it.

It is my desire to present this case on the facts, and not on any theory or hypothesis. I say nothing, therefore, on the question, what constitutes a State government in this Union; whether a State, by a process of suicide, may not cease to exist; whether a State may not by forfeiture lose its rights as a State; or whether, when the loyal government is overthrown, a State does not lapse into the condition of a Territory under Congressional jurisdiction, to be treated like other national

territory. All these questions I put aside. I choose to present the case of Arkansas on facts which nobody can question.

It is enough that the loyal authorities were overthrown, and there were no functionaries holding office under the State government bound by oath to support the Constitution of the United States; and since a State government is necessarily composed of such functionaries thus bound by oath, there was no State government we could recognize. Sir, does any Senator recognize the Rebel governor of Arkansas? Does any Senator recognize the Rebel functionaries who held the offices of the State? Of course not. It follows, then, that the offices were empty. And this was the practical conclusion of Andrew Johnson, when he began to reorganize Tennessee, in an address as early as 18th March, 1862. Here are his words:—

"I find most, if not all, of the offices, both State and Federal, *vacated*, either by actual abandonment or by the action of the incumbents, in attempting to subordinate their functions to a power in hostility to the fundamental law of the State and subversive of her national allegiance." [1]

If the offices were vacated, the machine of government could not work. And now the practical question is, how this machine shall be again put in motion. Obviously, not by any power within, but by some power without.

It may be said that the new State organization is authorized by the President's proclamation of amnesty, and that the claimant's case stands good according to the promises of this exceptional paper. A glance is enough to dispel this pretension. True it is that the

[1] Speeches, p. 455.

President put forward a plan for reorganizing loyal State governments in the Rebel territory, and he proffered a guaranty to these communities against domestic violence and Rebel invasion; but he neither proposed nor promised any representation in Congress or in the Electoral College. Nor would such a proposition or promise by him have possessed the slightest validity; because, by the Constitution, "each House is to be the judge of the elections, returns, and qualifications of its own members." This provision is inconsistent with any prerogative of the President over this question, even if such prerogative were not controlled by that other provision which reserves to Congress the power to admit new States into the Union.

The Proclamation declared, that, whenever, in any of the States of Arkansas, Texas, Louisiana, Mississippi, Tennessee, Alabama, Georgia, Florida, South Carolina, and North Carolina, a number of persons, not less than one tenth in number of the votes cast in such State at the Presidential election of 1860, each having taken the particular oath prescribed by the Proclamation, and not having since violated it, and being a qualified voter by the election law of the State existing immediately before its secession, and excluding all others, should *reëstablish* a State government which should be republican, and in no wise contravening the Proclamation oath, it should be recognized as the true government of the State, which should receive thereunder the benefits of the constitutional provision that "the United States shall guaranty to every State in this Union a republican form of government." Subsequently, in the same paper, the President declares "that whether members sent to Congress from any State shall be admitted to seats consti-

tutionally rests exclusively with the respective Houses, and not to any extent with the Executive." Nothing is said on the participation of such reorganized State in the approaching Presidential election; and the question seems left open for the judgment of Congress, to which it obviously belongs, to be settled by joint action.

It is plain, therefore, that the reorganization contemplated by the President was in nature provisional. It was not complete or permanent, but evidently looked to the action of the legislative power to determine representation, whether in Congress or in the Electoral College. Loyal governments might be established in the manner indicated for the conservation of local order, and these would be recognized and upheld provisionally by the military power. Considered from this point of view, and in the absence of Congressional action, the President's plan of reconstruction was, to a certain extent, proper, if not necessary, and very little obnoxious to objections sometimes brought against it. A handful of persons keeping their loyalty might justly look to the military power for support against a hostile majority. Such a handful might be allowed to set up a local government for the management of local affairs, and to assist the National Government in the work of restoration. All this is natural. But the limitation is clear. Admitting it right to authorize the establishment of a local government for the benefit of a handful of loyal persons in a Rebel State, it does not by any means follow that such local government can be entitled to representation in the National Government as a loyal unit, on an equality with the loyal States of the Union. The two questions are entirely different, and the latter was wisely left untouched by the Proclamation.

Besides, the power of the President to institute this government is only as commander-in-chief of the army. It is therefore military in character. But what proceeds out of this power is, from the nature of the case, *provisional or temporary, until it has received the sanction of Congress.* To a certain extent, and from the necessity of the hour, military governments may be constituted by the President; but permanent civil governments, with ——

Mr. Collamer. To last beyond the war.

Mr. Sumner. As the Senator from Vermont well suggests, " to last beyond the war," with right of representation in Congress and in the Electoral College, cannot be constituted by the President. Such a power would be open to infinite abuse, and in the hands of an ambitious President might be employed for selfish purposes. The national safety, in harmony with republican principles, requires that it should be exercised by Congress, which must take the lead in calling the new government into being.

Against these conclusions there can be no argument founded on principle. But it may be said that the admission of Senators from Virginia constitutes a precedent. This is a mistake. The Virginia case is a precedent for nothing, unless it be to make us more careful for the future. It arose at the beginning of the troubles, before the relations of the Rebel States had become fixed by pertinacious war, and was little considered at the time. But, beyond all, it had this peculiarity, — that a large section, geographically, of Virginia, had, in fact, declined to recognize the pretension of secession, and promptly constituted a loyal government

without military intervention, so that practically it had never been part of the Rebel Government. The circumstances were so exceptional, that this case cannot be cited to determine our conduct toward a State which in all its parts, throughout its whole jurisdiction, accepted the pretension of secession, and maintained it by arms. Such a State is, beyond all question, a Rebel State, with no title to a place in Congress or in the Electoral College, until readmitted to its ancient rights by a vote in both Houses of Congress.

The readmission of a Rebel State to representation is not less important than its original admission into the Union. And when it is considered that what is done for one such State will be a precedent for all, its importance is multiplied by the number of Rebel States; and this again is augmented infinitely by the disturbed condition of affairs, and the supreme duty to take every precaution for the restoration of permanent tranquillity. It is not enough, if we comply with certain forms, or constitute a State in name only. Much more must be done, and all this must be placed under fixed and irreversible guaranties. Vain is victory on the battle-field, if these guaranties are not obtained. To make these possible, our armies are now engaged in the deadly shock. That the future at least may be secure, the present is given over to blood and slaughter, to graves and epitaphs. And here is the difference between your responsibilities and those of the soldier. The latter sees only the present; but you must see the future also. The soldier meets the enemy face to face; the statesman, by wise precautions, provides that the enemy, once conquered, shall never rise again. Vain is the work of

the soldier, if not consummated and crowned by the wisdom of the statesman.

For years Slavery has been claiming guaranties in States and Territories, and these chambers have echoed to the hoarse, inhuman cry. At last another voice begins to prevail, ascending from basement to cupola, filling chamber and dome with diviner echo: it is the voice of Freedom claiming guaranties. In the absence of any constitutional prohibition of Slavery, it is evident that these guaranties can be obtained only under sanction of Congress in its legislative capacity. And here we are brought again to the question of representation; for as it is clear that representation cannot be conceded, until the guaranties for Freedom have been secured, so it follows, representation can be obtained only under the sanction of Congress in its legislative capacity.

That Congress in its legislative capacity must determine this question is sustained by the necessity of the case, by reason, by authority, and by the President's Proclamation.

1. I have already shown that guaranties for Freedom are *a condition precedent* to representation; so that, by the necessity of the case, the latter must be determined by the joint action of both Houses of Congress. Such is one form in which this necessity appears. But there is another.

Congress must have jurisdiction over every portion of the United States *where there is no other government;* but there can be no other government in the Rebel States; so that the words of Chief Justice Marshall are as applicable to a State without a loyal State government as they were originally to a Territory: —

"Perhaps the power of governing a Territory belonging to the United States, which has not by becoming a State acquired *the means of self-government*, may result necessarily from the facts that *it is not within the jurisdiction of any particular State*, AND IS WITHIN THE POWER AND JURISDICTION OF THE UNITED STATES." [1]

The three things here affirmed of a Territory may all be affirmed of a Rebel State.

First. It has not the means of self-government.

Secondly. It is not within the jurisdiction of any particular State.

Thirdly. It is within the power and jurisdiction of the United States.

From these again ensues the necessity of Congressional jurisdiction.

2. It would be unreasonable, if not absurd, for each Chamber to determine the question of representation for itself. Suppose, for instance, the Senate admit claimants from Arkansas, and the House reject them. Then we should witness the anomaly of a State admitted to one Chamber and excluded from the other. This would be *semi-admission* into the Union. Part would be *in*, and part *out*. The Senators and Representatives of the same State would be compelled to separate, as, in Grecian mythology, one of the memorable twins, Castor and Pollux, was translated to Olympus, and the other was left upon earth. The Constitution does not contemplate the repetition of any such fable. Arkansas must stay away, until she can be received in *both* Houses, and be recognized as a unit, not as a fraction; but no power short of Congress can assure this equal reception in both Houses.

[1] American Insurance Company *v.* Canter, 1 Peters, S. C. R., 542.

3. Authority is in harmony with reason. The question seems to have been anticipated by the opinion of the Supreme Court of the United States, as pronounced by Chief Justice Taney in the case of *Luther* v. *Borden*. Here are the words: —

"The fourth section of the fourth article of the Constitution of the United States provides that the United States shall guaranty to every State in the Union a republican form of government, and shall protect each of them against invasion, and, on the application of the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic violence.

"Under this article of the Constitution, it rests with Congress to decide what government is the established one in a State. For, as the United States guaranty to each State a republican government, Congress must necessarily decide what government is established in the State, before it can determine whether it is republican or not. And when the Senators and Representatives of a State are admitted into the councils of the Union, the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority. And its decision is binding on every other department of the government, and could not be questioned in a judicial tribunal."[1]

According to these positive words, "it rests with Congress to decide what government is the established one in a State." But Congress can decide only through joint action.

4. The Constitution, also, by positive text, seems to place the question beyond doubt. There are express words, as we have already seen, declaring that "the

[1] 7 Howard, R., 42.

United States shall guaranty to every State in the Union a republican form of government." If these words stood alone, the case would be clear; but it becomes clearer still, when we revert to the other clause, by which it is provided that "the Congress shall have power to make all laws which shall be necessary and proper for carrying into execution all powers vested by this Constitution in the Government of the United States." Now, since the guaranty is vested in the Government of the United States, it follows that Congress has the power for carrying it into execution. In Arkansas a republican government has been overthrown by rebellion. Congress must see that such government is restored; and to this end it has all needful power. Congress, and not the President, must decide when the restoration has taken place.

5. There is also the President's Proclamation, which, by its very terms, necessarily implies the action of Congress. We have, first, the positive declaration that "whether members sent to Congress from any State shall be admitted to seats constitutionally rests exclusively with the respective Houses, and not to any extent with the Executive." But the language of the Proclamation and of the accompanying message plainly assumes that the Rebel States have lost their original character as States of the Union. Thus in one place the President says that "the loyal State governments of several States have for a long time been *subverted*." But if subverted, they no longer exist. In another place he proposes to "*reinaugurate* loyal State governments." But a proposition to *reinaugurate* implies a new start. In another place he proposes to "*reëstablish* a State government which shall be republican." But we do

not *reëstablish* a government continuing to exist. In another place he proposes to "*set up*" a State government in the mode prescribed. But whatever requires to be set up is evidently down. In another place he considers how to guaranty and protect "a *revived* State government." But we revive only what is dead, or, at least, faint. There is still another place, where the President evidently looks to the possibility of a change of name, boundary, subdivisions, constitution, and general code of laws in the restored State. These are his identical words: "And it is suggested *as not improper*, that, in *constructing* a loyal State government in any State, *the name of the State, the boundary*, the subdivisions, the constitution, and the general code of laws, as before the Rebellion, be maintained." Thus the President does not insist that even the name and boundary of a State shall be preserved. He contents himself with suggesting that it will not be "improper" to preserve them "in *constructing* a loyal State government." Of course this suggestion of what is not improper implies necessarily that in his opinion even these great changes are within the discretion of the revived community.

I have called especial attention to the language of the President, because it constantly assumes, in a succession of phrases, that the Rebel States are in an abnormal condition, from which they are to be recovered or revived; and since such recovery or revival can be consummated only by action of Congress, it is reasonable to infer that such was his expectation. At all events, the Proclamation, by repeated assumptions with regard to the Rebel States, testifies to the necessity of Congressional action.

We have already seen that Andrew Johnson declared the State of Tennessee "vacated" of all local government which we are bound to respect; and this language obviously harmonizes with that of the President. But Arkansas was in a similar situation.

Such are some of the arguments for the power of Congress. Others might be adduced; but I have said enough. The necessity of the case, reason, the authority of the Supreme Court, the Constitution, and the President's Proclamation, each and all, tend to the same conclusion, even without resorting to those war powers which are all within the reach of Congress. Yet if we glance at the latter, we find the power of Congress declared beyond question. There is nothing the President may do as commander-in-chief which Congress may not direct and govern, according to the authoritative words of Chancellor Kent: —

"Though the Constitution vests the executive power in the President, and declares him to be commander-in-chief of the army and navy of the United States, *these powers must necessarily be subordinate to the legislative power in Congress.*" [1]

And these powers, vast as they are, when called into activity by the exigency of war or rebellion, become as constitutional as if specified precisely in a written text.

Mr. President, there is a saying of Antiquity applicable to this question: *Make haste slowly.* Do not fail to make haste; but let your haste be governed by wisdom and prudence. In making haste, do not sacrifice

[1] Commentaries on American Law (6th edit.), Vol. I. p. 92, note *a*.

all safeguards for the future. In haste to welcome Senators from Rebel States, do not forget everything else: do not forget the principles of republican institutions, offended by the rule of a minority; do not forget the principles of justice among the States, shocked by admission of the fraction of a Rebel State to equality of power with loyal States; do not forget the disturbed condition of the Rebel States, rendering the civil authorities subordinate to the military; do not forget the necessity of a connecting link of legality between the old and the new; do not forget that commercial intercourse must be restored, and every ban of proclamation or statute removed, before representation can be allowed; and, still further, do not forget that the Rebel States, by their own acts, sustained by bloody war, have voluntarily placed themselves outside the pale of political association, until Congress shall recognize them again entitled to their original equality; but, above all, do not forget that there can be no recognition of a Rebel State, until its permanent tranquillity is assured by irreversible guaranties which no local power can disturb. Keep these things in mind, and then make haste.

Of course, when within the confines of a State the Rebellion is triumphantly subdued, and the great body of the people manifest an unmistakable loyalty, — when local elections are held according to ordinary municipal forms, — when laws, and not arms, prevail, — and when a government, republican in fact as in name, making Slavery forever impossible, under any form or pretence, is permanently established, — then will Congress, by proper legislative action, rejoice to welcome the newly constituted State to its equal share

in the National Government. But such welcome must not be precipitate. It can be offered only after most careful inquiry into the actual condition of things, and the assured conviction that the Rebel State has been newly constituted in fact as in name. And this caution is needed, not only for the good of the Union, but for the good of the State itself, which must be saved from premature responsibilities beyond the measure of its present powers.

Sir, it is much to be a State in full fellowship and equality with other States represented in these two Chambers, with a voice in the election of President and Vice-President, and with a star on the national flag. To be admitted into such prerogatives and privileges, a State must be "above suspicion," and it must be able to use well all the great powers belonging to the State. But if a State is not yet "above suspicion," and is not strong enough to stand alone, even against domestic disturbers, it cannot expect immediate recognition. It must wait yet a little longer, until, restored at last in character and in strength, it can do all the duties of a State, and with master-hand grasp that Ulyssean bow which pretenders strive in vain to bend.

Mr. President, I conclude as I began, with my heart's gratitude to those brave citizens who again in Arkansas lift the national banner. Let them not be disheartened. Their country is with them in all their perils and all their efforts, longing to receive them again into ancient fellowship and equality; but the time for this welcome has not yet come. Meanwhile let them remember that "they also serve who only stand and wait."

A debate ensued, in which Mr. Reverdy Johnson replied to Mr. Sumner. Mr. Wade moved that the joint resolution lie on the table, which was lost, — Yeas 5, Nays 32. On motion of Mr. Lane it was referred to the Committee on the Judiciary, together with the credentials of Hon. William M. Fishback and Hon. Elisha Baxter. At the same time, on motion of Mr. Sumner, his resolution on the conditions of Reconstruction [1] was referred to the same Committee.

June 27th, Mr. Trumbull, from the Committee, reported adversely on all these references.

[1] *Ante*, p. 296.

MEANS FOR THE WAR THE TRUE OBJECT OF THE TARIFF.

Remarks in the Senate, on an Amendment to the Tariff Bill, June 16, 1864.

June 16th, the Tariff Bill being under consideration, and Mr. Pomeroy, of Kansas, moving to reduce the duty on railroad iron from seventy cents to sixty cents per hundred pounds, Mr. Sumner said: —

MR. PRESIDENT, — I am reluctant to think that we are legislating for a long number of years. Indeed, I regard what we are now doing as temporary or provisional. It is to meet the exigency of the hour; and on this account precisely I am ready to follow the Chairman of the Committee on Finance, in opposing the proposition of the Senator from Kansas.

Here I repeat, Sir, what I have said very often on this floor since the Rebellion began, that there is one rule which I always follow, and, by the blessing of God, will follow to the end. It is this: show me how I can best contribute to the resources of my country, enabling it to reach the end we all desire, and I shall vote for it. At this moment I know no way in which I can contribute more than by adding to the financial strength. Show me how I can most surely secure means to carry on the war and obtain its successful close, and I shall vote for it. If, therefore, by a tax at seventy cents I can prom-

ise a larger income than by a tax at sixty cents, I shall vote for seventy cents. To that extent I follow the Senator from Maine.

The amendment was lost, — Yeas 17, Nays 20.

NO TAX ON EDUCATION.

Remarks in the Senate, on a proposed Duty on Philosophical Instruments for Colleges, June 17, 1864.

June 17th, on the Tariff, the question arose of repealing the clause exempting from tax "philosophical apparatus and instruments imported for the use of any society incorporated for philosophical, literary, or religious purposes, or for the encouragement of the fine arts, or for the use or by the order of any college, academy, school, or seminary of learning," and imposing a duty of twenty per cent *ad valorem*.

Mr. Sumner said : —

LITTLE money, much mischief: these are two objects that present themselves. That we shall obtain little money is obvious, when it is considered that the philosophical apparatus and instruments imported by colleges and literary institutions, particularly when exposed to this tax, will be of little value. Twenty per cent on their value will not be much for the country. The detriment will appear in the discouragement to their importation. Now, Sir, I would encourage such importations. I would encourage everything by which these associations may be benefited. Not only the associations will gain by such encouragement, but the whole land will reap the advantage. If I could have my way, I would rather lavish upon them bounties. To my mind it is clear that the education of our country would be advanced by stimulating such importa-

tions rather than by discouraging them. But there is no question now of stimulating; the proposition is to discourage. I hope it will not be imposed.

The tax was voted in committee, — Yeas 18, Nays 16.

At the next stage of the bill Mr. Sumner renewed his opposition.

I MERELY wish to make one remark. I would not protract the discussion at this late hour; but I must say that to my mind the proposition is not creditable to our country, and, I think, if adopted, will be mischievous. That is the way it impresses me. I cannot see it otherwise. It is to me a tax on education, and as such odious to an extent which I am hardly willing to characterize. Because we are engaged in war, I find no reason for a tax on education. Tax luxuries, tax necessaries, tax everything else; but do not tax education. As I said this morning, if need be, rather give it a bounty.

The vote in committee was concurred in, and the tax imposed.

ABOLITION OF THE COASTWISE SLAVE-TRADE.

SPEECHES IN THE SENATE, ON AN AMENDMENT TO THE CIVIL APPROPRIATION BILL, JUNE 24 AND 25, 1864.

MAY 2, 1862, Mr. Sumner gave notice that he should, at an early day, ask leave to introduce a bill to abolish the coastwise traffic in slaves under the flag of the United States; and he added, "In giving this notice, I desire to say that there is a disgraceful statute which exists unrepealed, and my object is to remove it from the statute-book."

March 22, 1864, he reported from the Committee on Slavery and Freedmen a bill to prohibit commerce in slaves among the several States, and the holding or transporting of human beings as property in any vessel within the jurisdiction of the National Government, which was read and passed to a second reading. At the same time he said that he did this as a report in part on "a large number of petitions calling upon Congress to provide by legislation for the extinction of Slavery."

The bill reported was as follows.

"A BILL to prohibit commerce in slaves among the several States, and the holding or transportation of human beings as property in any vessel within the jurisdiction of the National Government.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there shall be no commerce in slaves among the several States, by land or by water; and any person attempting or aiding to transport slaves, as an article of commerce, from one State to another State, or any person who shall take part in such commerce, either as seller, buyer, or agent, shall be deemed guilty of a misdemeanor, and, being convicted thereof before any court having competent jurisdiction, shall suffer imprisonment for not more than five years, and be fined not exceeding five thousand dollars, one half of such fine to go to the informer; and every slave so treated as an article of commerce among States shall be free.

"SEC. 2. *And be it further enacted*, That no human being shall be held or transported as property in any vessel on the high seas, or sailing coastwise,

or on any navigable waters within the jurisdiction of the United States; and every vessel violating the provisions of this act shall be forfeited to the United States; and every master of such vessel consenting to such violation shall be deemed guilty of a misdemeanor, and on conviction thereof subject to the penalties hereinbefore provided, one half of the fine to go to the informer; and every human being so held or transported as property shall be free.

"SEC. 3. *And be it further enacted*, That all acts or parts of acts inconsistent herewith, including especially so much of an act approved March second, one thousand eight hundred and seven, as regulates the coastwise slave-trade, are hereby repealed."

Failing to obtain an opportunity for this bill in the Senate, Mr. Sumner determined to move it on an appropriation bill.

June 24th, the Senate having under consideration the bill making appropriations for sundry civil expenses of the Government, Mr. Sumner moved the following amendment: —

"*And be it further enacted*, That sections eight and nine of the Act entitled 'An Act to prohibit the importation of slaves into any port or place within the jurisdiction of the United States from and after the first day of January, in the year of our Lord 1808,' which sections undertake to regulate the coastwise slave-trade, are hereby repealed."

Mr. Sherman, who had succeeded Mr. Fessenden as Chairman of the Finance Committee, "would not oppose the amendment on an ordinary bill," but he trusted "the Senate would keep this bill free from these disputed, extraneous, political questions."

Mr. Sumner replied: —

MR. PRESIDENT, — I am sorry that the Senator objects to this amendment. It is true, his objection is of form; but I venture to say that no such objection should be made to such a proposition, especially at this stage of the session.

In moving it now on an appropriation bill, I follow approved precedents. There is no rule of order against it; nor is there any rule of usage. On the contrary, it is in conformity with both order and usage.

The Senator wishes to keep the Appropriation Bill free from extraneous matter. But this is not sufficient

reason for excluding my amendment, unless the Senator is ready, for the sake of form, to sacrifice substance. If it be important that my amendment should prevail, and if at this late stage of the session it may be difficult to carry it otherwise, then am I clearly right in moving it, as I now do, and the Senator is wrong in opposing it. An appropriation bill is like a "through train," and while its special office is to appropriate money, yet it may carry anything required by the public good.

Why, Sir, there is hardly ever an appropriation bill that is not compelled to take passengers in this way. It has been so during the present session repeatedly; and if the Senator will read the "Statutes at Large," he will find that the usage has prevailed for years. It is no new thing. I do not begin it.

If it were necessary to furnish examples, I might point to my friend, the Senator from New Hampshire [Mr. HALE], who gained one of his proudest triumphs in this Chamber, securing to him the sympathy and gratitude especially of sailors, by moving on an appropriation bill the abolition of the lash in the naval and commercial marine of the United States. Had he been driven to wait a special act for this purpose, I fear he would have been waiting to this day. And the example of the Senator has been followed by the Senator from Iowa [Mr. GRIMES], who, on an appropriation bill, moved and carried the abolition of grog in the navy.

But I am not without personal experience under this head. I trust that I shall not take too great a liberty, if I adduce it even in detail. I was chosen to the Senate for the first time immediately after the passage of the infamous Fugitive Slave Act of 1850. If I re-

ceived from the people of Massachusetts any special charge, it was to use my best endeavors to secure the repeal of that act. I began the work in the first session that I was here. Disappointed in various efforts to bring the question directly before the Senate on a bill or resolution, I ventured at last — on the advice of eminent Senators who differed from me in sentiment, but who appreciated candidly the obligations of my position — to move the repeal on an appropriation bill. A debate ensued, which lasted till late in the evening. It may not be uninteresting to know that on the ayes and noes there were but four votes in the affirmative, — Mr. Chase, Mr. Hale, Mr. Sumner, and Mr. Wade. This was 26th August, 1852. Such was the weakness of our cause at that time.

But please remark, that, throughout the protracted and sometimes acrimonious debate, it was never for a moment objected that the proposition was "not germane to the bill," or that it was not completely in order. Had any such thing been tenable, had there been the least apology for it, had it not been utterly unreasonable, be assured, Sir, it would have been made the excuse for stifling the discussion. The two political parties had just made their nomination for President. Franklin Pierce was the candidate of the Democrats, and Winfield Scott of the Whigs. Both had united on platforms declaring the Compromise measures, including the Fugitive Slave Act, "a finality" not to be opened or discussed. But they were opened and discussed on that day.

Mr. Hunter, of Virginia, was at the time Chairman of the Committee on Finance. He was in many respects a remarkable person, with a mind enlarged some-

what by study and long experience in public affairs, and with a temper not easily disturbed. Looking back upon his conduct of the business entrusted to him, there can be no question of his ability or fidelity. There was neither weakness nor indifference in that mildness of sway. He understood completely the duties of his position, was a jealous guardian of the appropriation bills, and was, moreover, a most determined thick-and-thin partisan of Slavery in all its pretensions. But I do not recollect that he interposed any objection to the time or place of my motion; and though the Fugitive Slave Bill was part of his political and social creed, I am sure that he allowed the debate to close without any criticism upon my course, or a single impatient word. All this now belongs to history, and I mention it as a precedent for the present hour.

My motion that day was discussed on its merits, and I trust my motion to-day will be discussed in the same way.

I seek to remove from the statute-book odious provisions in support of Slavery. Whoever is in favor of those provisions, whoever is disposed to keep alive the coastwise slave-trade, or to recognize it in our statutes, will naturally vote against my motion. And yet let me say that I am at a loss to understand how, at this moment, at this stage of our history, any Senator can hesitate to unite with me in this work of expurgation and purification. At all events, I trust the Senator from Ohio will not set up an objection of form to prevent the success of this good work. He must not be more severe against Freedom now than was the representative of Slavery who occupied his place when I moved the repeal of the Fugitive Slave Bill.

Mr. Reverdy Johnson agreed with Mr. Sherman in his objection, and then argued, that, on the repeal of the Act of Congress regulating this trade, it could be carried on under the Constitution without restriction.

Mr. Sumner said : —

Of course I disagree radically with the Senator from Maryland [Mr. Johnson]. He is always willing to interpret the Constitution for Slavery. I interpret it for Freedom. And yet he is anxious lest the repeal of the two obnoxious sections regulating the coastwise slave-trade should leave it open to unrestrained practice. I do not share his anxiety.

Where will the slaves come from? Not from the Rebel States; for Emancipation is the destined law there. Not from his own State; for Emancipation will soon be the law there. But even should slaves be found for this traffic (which, thank God, cannot be the case), I am unwilling that Congress should continue to regulate the ignoble business. Our statute-book should not be defiled by any such license. Remove this license, and the Constitution, rightly interpreted, will do the rest.

Here arises the difference between the Senator and myself. He proceeds as if those old days still prevailed, when Slavery was installed supreme over the Supreme Court, giving immunity to Slavery everywhere. The times have changed, and the Supreme Court will yet testify to the change. To me it seems clear, that, under the Constitution, no person can be held as a slave on shipboard within the national jurisdiction, and that the national flag cannot cover a slave. The Senator thinks differently, and relies upon the Supreme Court; but I cannot doubt that this regenerated tribunal will

yet speak for Freedom as in times past it has spoken for Slavery. And I trust, should my life be spared, to see the Senator from Maryland, who bows always to the decisions of that tribunal, recognize gladly the law of Freedom thus authoritatively pronounced. Perhaps he will wonder that he was ever able to interpret the Constitution for Slavery. If he should not, others must.

But my special purpose is to remove odious provisions, and I have contented myself with words of repeal, in the hope of presenting the proposition in such a form as to unite the largest number of votes. My own disposition has been to go further, and to add words of positive prohibition. But, at the present moment, I am willing to waive this addition, and content myself with the simple repeal, that our statute-book may no longer be degraded, trusting that the Constitution, rightly interpreted, will suffice. And yet the positive prohibition, which the Senator seems to invite or to challenge, would not only purify the statute-book, but effectually guard against the future, so that both Constitution and Law would be arrayed against an infamous traffic. Clearly this ought to be done; and if I have not presented it, do not set it down to indifference or inattention, but simply to my desire that the proposition, moved on an appropriation bill, should be limited to the necessity of the occasion. To do less than I propose would be wrong. I should be glad to do more.

Mr. Hendricks, of Indiana, remarked: —

"I am surprised that any Senator should oppose the proposition of the Senator from Massachusetts, for we all know that eventually it will be adopted. The objection as to its materiality, or proper connection with this measure, is but an objection of time. No gentleman can question that the

Senator from Massachusetts will eventually carry his proposition. . . . . Why, then, contest the matter longer? . . . . It may as well come now as at any time. . . . . Sir, I regret to see this. Every law put upon the statute-book by our fathers, with a view of carrying out the provisions of the Constitution, or in pursuance of the spirit of the union between the States, I regret to see wiped out; but we have witnessed it, and I think the effort to delay is useless."

Mr. Collamer, of Vermont, argued for the repeal, insisting that "all laws that undertake to deal with slaves, who are persons under the Constitution and our laws, as articles of merchandise, are unconstitutional."

Meanwhile Mr. Sumner added to his amendment the words, "and the coastwise slave-trade is prohibited forever"; so that the amendment repealed the two obnoxious sections regulating the trade, and also prohibited it.

June 25th, the debate continuing, Mr. Sumner spoke again.

I WISH to make one remark on the question of power. I say nothing on the point whether Congress under the Constitution may regulate the trade in slaves between the States on the land. I waive that question. The proposition before the Senate simply undertakes to prohibit the coastwise slave-trade. Now, Sir, I hold in my hand Brightly's Digest. Turning to that, you will find one head entitled "Coasting Trade," containing no less than forty-eight different sections, each in the nature of a regulation by Congress on that subject. I turn next to another head, entitled "Passengers." There I find seventeen sections, each in the nature of a regulation on that subject; and in point of fact it is well known that Congress has, by most minute regulations, determined the conditions on which passengers shall be carried in ships. It is known that those regulations are applied especially on board the California steamers, and the steamers between this country and Europe. In the one case the steamers are foreign; in the other they are domestic, — or the trade, if I may so say, is domestic.

In view of this minute and ample legislation on the subject of passengers and of the coasting-trade, I submit there can be no question that Congress can go further, and, by a final regulation, declare that in our coasting-trade there shall be no such thing as the slave-trade.

The amendment was lost, — Yeas 13, Nays 20.

At the next stage of the bill Mr. Sumner moved the same amendment, with the words prohibiting the coastwise slave-trade. On moving it, he remarked: —

I HAVE but one observation to make. It seems to me this Congress will do wrong to itself, wrong to the country, wrong to history, wrong to the national cause, if it separates without clearing the statute-book of every support of Slavery. Now this is the last support in the statute-book, and I entreat the Senate to remove it.

Mr. Saulsbury moved the indefinite postponement of the bill, which was lost without a division. Meanwhile Mr. Sumner had succeeded in attaching to the Appropriation Bill the clause opening United States courts to colored witnesses. Alluding to this incident, Mr. Doolittle said that he did not like to vote for such measures on appropriation bills, but that he was in favor of the abolition of the coastwise slave-trade, and should vote in the affirmative.

The amendment was carried, — Yeas 23, Nays 14, — and the bill was approved by the President July 2, 1864.

OPENING OF THE UNITED STATES COURTS TO COLORED WITNESSES.

SPEECH IN THE SENATE, ON AN AMENDMENT TO THE CIVIL APPROPRIATION BILL, JUNE 25, 1864.

FAILING to obtain a hearing for the bill reported from the Committee on Slavery and Freedmen,[1] Mr. Sumner resorted again to the Appropriation Bill.

June 25th, the Senate having under consideration the Civil Appropriation Bill, Mr. Sumner, after stating that the third section appropriated one hundred thousand dollars to aid the administration of justice, especially in bringing to conviction counterfeiters of Treasury notes, bonds, or other United States securities, as well as coin, remarked, that, to accomplish this result, something more than money was needed, — that there must be an amendment of the Law of Evidence; and he sent to the Chair the following proviso, to be added to the third section: —

"*Provided*, That in the courts of the United States there shall be no exclusion of any witness on account of color."

Mr. Sumner then remarked: —

THIS, Mr. President, is an amendment surely apposite. The objection of form, urged to my other proposition, is without any shadow of support here. It is proposed in the bill to appropriate one hundred thousand dollars to "bring to trial and punishment" counterfeiters. The object is important, especially at this moment, when we are putting in circulation national securities on so large a scale. But suppose the

[1] *Ante*, p. 2.

counterfeiter, in a State where the evidence of colored persons is excluded, chooses to employ such persons in his crime. How can you bring him to punishment? All this large appropriation will not help then. It will be of no avail. The counterfeiter, surrounded by colored accomplices, may mock your laws. But admit the testimony of these accomplices, and then will justice be done. I refer to this class of cases because your bill provides especially for them, and thus attests the importance of precautionary effort.

But the hardship and absurdity of this rule, apparent in the case of a counterfeiter surrounded by colored accomplices, arise in every other case of crime. How justice can be administered, where such a rule prevails, I am at a loss to understand. Now that Slavery is disappearing, this rule ought to disappear also.

The subject has already been discussed at length, during the present session, in an elaborate report which I have had the honor of making from the Select Committee on Slavery and Freedmen; so that I need not occupy your time. Besides, the case is too plain for argument. But I have in my hands letters from gentlemen in Virginia, showing the practical necessity of the testimony of colored persons there. Here is one: —

"Hall of the Convention,
Alexandria, Virginia, March 17, 1864.

"I address thee as friend, although having no personal acquaintance, but have long known thee by reputation as a friend to the human race. Having been connected with the reorganized government from its beginning, I naturally feel a strong interest in its welfare.

"We have in Convention abolished slavery in the organic law of the State, and it would at first sight seem as if our fondest hopes were realized. But another difficulty now stares us in the face, which, in the present state of public opinion, we cannot conquer: I allude to the subject of allowing the freedmen to give testimony in our courts. This will not be allowed, where the interests of whites are involved. The result that will follow any one can foresee, — that their persons and property will be at the mercy of every vagabond who may happen to have a black heart instead of a black skin.

"While they were slaves, their masters were a protection to them against others. Although there was not much law looking that way, their owners being of the all-powerful class in the communities in which they lived, their influence answered the end very well. My object in writing was to make thee acquainted with the probable future position of these people, thinking it might be possible to ameliorate their condition by some Federal legislation. While I speak of Virginia, I have no doubt but that the same will be true of the whole South, and will be a gigantic evil that may lead to the most disastrous results. The negro, after this war, will not be the same man as before: breathing the air of freedom, trained to arms, understanding the power of combination, and familiar with blood, it will be tampering with a volcano to deny him protection of person and property."

I do not give the name of this writer, because he is unwilling that it should be known. But you will observe, from the date of the letter, that he was a member of the Virginia Convention. His testimony will speak for itself. The other letter, as you will see, is from the District Judge of Virginia.

"UNITED STATES DISTRICT COURT,
ALEXANDRIA, VIRGINIA, March 22, 1864.

"DEAR SIR, — Some time since I saw by the papers that you were urging the admission of our freedmen as witnesses in all United States courts.

"In several confiscation cases now pending in this court such testimony will be of the greatest importance. Indeed, I am told by the United States Assistant Attorney in this court, that, from his knowledge in the preparation of these cases, the prosecution will probably fail, and the Government be subjected to costs, unless such testimony is allowed in several cases now on our docket. You will therefore see the necessity of a speedy change of the law, corresponding to the change which has taken place in the condition of the freedmen.

"Your obedient servant,

"JOHN C. UNDERWOOD,
District Judge.

"Hon. CHARLES SUMNER, *United States Senate.*"

This is practical wisdom. Let me add to it proof from another quarter. Sir Samuel Romilly, whose great fame as a lawyer was enhanced by humane labors in Parliament, has furnished evidence on this very point.

"The laws of the Colonies are said to be humane; but by those laws a child of five or six years old may receive, for a slight offence or for no offence, at the caprice of the master or overseer, no less than thirty-nine lashes with what is termed a cart-whip. To this dreadful extent the law *authorizes* the infliction of punishment by individuals. But even in cases where the law conveys no authority, where wanton cruelty is inflicted in defiance of the law, how easy it must be to escape detection, when the testimony of a negro, or a thousand negroes, would not avail against a white

man! And with what force must this argument strike, when we reflect on the proportion which the white bear to the black inhabitants of the island! What security could we expect in our passage even through the streets of London, if ninety-nine people out of a hundred, or even nine out of ten, were incompetent to give evidence in a court of justice?"[1]

Mr. President, in bringing forward this measure, I waive for the present all questions of right, and, if you please, all sentiments of humanity. I ask attention plainly and directly to the practical failure of justice which must arise without its adoption. This may be seen under two different heads: first, with regard to colored persons; and, secondly, with regard to white persons.

If colored persons cannot testify against white persons, what protection can they have against outrage? The white person may perpetrate any brutality upon colored persons with impunity. There is nothing in the dreary catalogue of crime, from a simple assault to murder itself, which may not be committed with impunity by a white person, if no other white person be present. This bare statement is enough. Surely at this moment there should be no delay in preventing such failure of justice.

But the same failure may occur in the case of white persons. Let a white person be assaulted, or murdered, if you please, by another white person, but only in the presence of colored persons, and justice cannot be administered. The criminal will continue at large unpunished.

Therefore, for the administration of justice, that it

[1] Speeches, Vol. I. p. 25.

may not fail to the colored person, and then again that it may not fail to the white person, there should be no exclusion of any citizens on account of color.

Let the witness always be admitted to testify, leaving the jury to be judges of his credibility. If his story seems improbable, or there be anything in his manner, conduct, or past life to excite distrust, the jury will be able to measure the just weight of his testimony.

It is hard to be obliged to argue this question. I do not argue it. I will not argue it. I simply ask for your votes. Surely, Congress will not adjourn without redressing this grievance. The king, in Magna Charta, promised that he would deny justice to no one. Congress has succeeded to this promise and obligation.

Mr. Sherman said he "trusted, that, after the experience of last night, when the thermometer here rose to ninety-three degrees, and we were all exhausted by a debate on irrelevant matter, the Senator from Massachusetts would not introduce upon this appropriation bill a topic of this kind." He thought we had already voted on this amendment on two other bills.

Mr. Sumner, after remarking that he had not been able to bring the amendment applicable to the United States courts to a vote by itself, said: —

I CAN state to the Senator the different occasions on which this principle prevailed. It prevailed on the statute emancipating slaves in this District; but here it was applicable only to cases arising in questions of freedom under the statute. It was next broadened to all proceedings in the courts of the District. But it has not been applied beyond that. I have sought to apply it generally; I have moved it more than once on other bills, and have failed; and the measure is

now pending as a bill reported by the Select Committee on Slavery and Freedmen, and it is also pending as a section of another bill reported by the Senator from Vermont [Mr. COLLAMER] from the Committee on Post-Offices and Post-Roads. Therefore it has the approval, as a general proposition, of two separate committees of this body, while, as a proposition applicable to the District of Columbia, it has had the sanction of the Senate twice over; and now I plead with the Senate not to arrest it here.

Mr. Sherman replied: "I agree with the Senator in the general principle entirely; but I hope he will not press the proposition as an amendment to this bill, for I know it will create discussion."

Mr. Sumner said: —

I BELIEVE it is always time for an act of justice, and I think this Congress ought not to separate without this act of justice. It ought to do it for the sake of the administration of justice. I have not put this case, you will bear witness, on any grounds of sympathy or sentiment or humanity; I plead for it now as essential to the administration of justice; and for one, as a Senator, I cannot willingly abandon the opportunity afforded me by my seat here of making this motion, — of making this effort to open the courts of my country to evidence without which justice must often fail.

Mr. Carlile, of Virginia, appealed to Mr. Sumner "to withdraw the amendment, and allow this subject to rest, at least until the next session of Congress." This he declined to do.

Mr. Buckalew, of Pennsylvania, thereupon moved to amend the amendment by adding, "nor in civil actions, because he is a party to or interested in the issue tried." Then came the following passage.

MR. SUMNER. I am in favor of that proposition, taken by itself; but I do not wish it put upon this.

Mr. Gratz Brown (to Mr. Sumner). That is just what other people say about yours.

Mr. Sumner. I understand that; but I wish to secure this justice.

Mr. Buckalew. I wish to secure the additional justice provided by my amendment.

Mr. Sumner. I will vote for the Senator's proposition by itself. Let him move it when mine is carried.

Mr. Saulsbury. I do not wish to say anything about the "nigger" aspect of this case. It is here every day, and I suppose it will be here every day for years to come, till the Democratic party comes into power and wipes out all legislation on the statute-book of this character, which I trust in God they will soon do.

The amendment of Mr. Buckalew was agreed to, and Mr. Sumner's amendment, as amended, was carried, — Yeas 22, Nays 16, — and the bill was approved by the President July 2, 1864.

RECONSTRUCTION, AND ADOPTION OF PROCLAMATION OF EMANCIPATION BY ACT OF CONGRESS.

Remarks in the Senate, July 1, 1864.

The effort at Reconstruction, which failed in the previous Congress, was superseded at the present session by another, having, like the former, as its distinctive feature, the assertion of the power of Congress over the Rebel States.

February 15th, Henry Winter Davis, of Maryland, reported a bill to guaranty to certain States, whose governments have been usurped or overthrown, a republican form of government. This bill provided for these States Provisional Governors, appointed by the President by and with the advice and consent of the Senate; also, the assembling of Constitutional Conventions, chosen by "loyal white male citizens," being a majority of the persons enrolled in the State, which shall declare "involuntary servitude forever prohibited, and the freedom of all persons guarantied in said State"; also, all slaves were declared emancipated, and persons free by this or any other act or by "any proclamation of the President" were protected in their freedom. After earnest debate, this bill passed the House May 4th, — Yeas 74, Nays 66.

In the Senate the bill was referred to the Committee on Territories, of which Mr. Wade was Chairman. May 27th, he reported it to the Senate with amendments. July 1st, it was on his motion considered, and, in order to save the bill at that late day of the session, he abandoned the amendments reported, the most important of which was to strike out the word "white," so as to read "all male citizens of the United States." This amendment was rejected, by Yeas 5, Nays 24, — the minority being Messrs. Gratz Brown, Lane, of Kansas, Morgan, of New York, Pomeroy, of Kansas, and Sumner. Mr. Gratz Brown then moved to substitute for the whole bill a single section, providing that the inhabitants of a State declared to be in insurrection shall not cast any vote for electors of President or Vice-President, or elect Senators or Representatives in Congress, until the suppression of the insurrection, "nor until such return to obedience shall be declared by procla-

mation of the President, issued by virtue of an Act of Congress, hereafter to be passed, authorizing the same." This was in conformity with propositions introduced by Mr. Sumner.[1] The House bill was unsatisfactory, inasmuch as it founded the new governments on "white male citizens": but, besides asserting the power of Congress over the Rebel States, it decreed the abolition of Slavery in these States; therefore Mr. Sumner favored it. But the substitute of Mr. Brown prevailed, — Yeas 17, Nays 16.

Mr. Sumner then brought forward his bill, originally reported from the Committee on Slavery and Freedmen, and moved it as an additional section: —

"*And be it further enacted*, That the Proclamation of Emancipation, issued by the President of the United States on the 1st day of January, 1863, so far as the same declares that the slaves in certain designated States and portions of States thenceforward should be free, is hereby adopted and enacted as a statute of the United States, and as a rule and article for the government of the military and naval forces thereof."

Mr. Hale, of New Hampshire, was in favor of this, but thought it "incongruous and out of place here." Mr. Sumner followed.

THE Senator from New Hampshire is entirely mistaken, when he says that the section moved by me is incongruous. The Senator whispers to me that he did not say so.[2] I beg his pardon; he began by saying it was incongruous. It is entirely germane, — nothing could be more germane. The section already adopted concerns the Rebel States: that I offer concerns the Rebel States. The Senator cannot vote against what I now offer; it is neither more nor less than this: to recognize as a statute the Proclamation of Emancipation, putting it under the guaranty and safeguard of an Act of Congress. That is all. It is as simple as day; it is as plain as truth. It is impossible for any person

[1] See, especially, Resolutions entitled "State Rebellion, State Suicide; Emancipation and Reconstruction," February 11, 1862, — *ante*, Vol. VI. pp. 301 – 305.

[2] Mr. Hale and Mr. Sumner sat next to each other.

recognizing the Proclamation of Emancipation, or disposed to stand by it, to vote against the amendment I now offer. I wish Emancipation in the Rebel States supported by Congress. I am unwilling to see it left afloat on a presidential proclamation. We are assured that the Proclamation will not be changed; but who knows what may be the vicissitudes of elections? I do not look far enough into the future to see what proclamation may be issued hereafter. I would make the present sure, and fix it forevermore and immortal in an Act of Congress.

Mr. Saulsbury, of Delaware, denounced the amendment as "an attempt by Federal legislation to legislate for the States themselves, to regulate their domestic institutions, — to control property, in other words." Mr. Gratz Brown said that the amendment, "as an independent proposition, met his hearty concurrence"; that he concurred heartily and fully with Mr. Sumner "as to the propriety of putting in the shape of a statute that proclamation of the President"; but that it ought not to be on the present bill, as it could not pass the House.

Mr. Sumner. I adopt the language of my friend from Missouri. He regards his proposition as necessary. I regard his proposition, or something equivalent, as necessary. But not less necessary do I regard that which I have the honor to offer. His is to meet a question in Reconstruction. Mine is to meet a similar question.

Mr. Brown. Mine is not a proposition for Reconstruction, at all. It is simply providing that they shall not exercise the elective franchise until Congress authorizes it by Act.

Mr. Sumner. I understand it. The obvious effect is to postpone all activities tending to Reconstruction, and to bring them all under the rule of Congress.

That is the object of the Senator. And my present object is to bring Emancipation under the rule of Congress, so that it shall no longer depend on the Proclamation of the President. I am unwilling that Emancipation shall depend upon the will of any one man, be he Senator or President. I would place it under the highest sanction which our country knows. If I could, I would place it at once under the shield of the Constitution; but that failing, let me place it under that other safeguard, an Act of Congress. I am sure the Senator cannot differ with me. But the Senator, whose experience here certainly does not compare with that of others, assures us that this measure cannot pass the other House. Sir, by what intuition has he arrived at that knowledge? I have no means of knowing that. On the contrary, if left to draw my conclusion from what has already occurred, I say, unhesitatingly, it can pass the other House. The Senator forgets, that, when it reaches the other House, it will not be as a bill, to go through its three different stages, — but as an amendment to a House bill, subject only to one stage of proceeding, with one vote. I tell the Senator it can pass the other House. It only requires that the Senate should send it there. Let us will it, and it can be done; and I do entreat the Senator from Missouri, who I know is pledged so strenuously to the cause of Emancipation, not to fail it at this hour.

The amendment of Mr. Sumner was lost, — Yeas 11, Nays 21.

The bill, as amended by the substitute of Mr. Brown, then passed the Senate, — Yeas 26, Nays 3. The House of Representatives disagreed to the substitute, and asked a conference. The Senate, on motion of Mr. Wade, receded from the substitute, — Yeas 18, Nays 14, — and so the bill passed both Houses; but it failed to receive the approval of the President of the United States.

NATIONAL ACADEMY OF LITERATURE AND ART; ALSO OF MORAL AND POLITICAL SCIENCES.

REMARKS IN THE SENATE, ON A BILL CREATING THESE TWO ACADEMIES, JULY 2, 1864.

JUNE 30th, Mr. Sumner asked, and by unanimous consent obtained, leave to bring in the following bill, which was read the first and second times by unanimous consent, and ordered to be printed.

A BILL to incorporate the National Academy of Literature and Art, and also to incorporate the National Academy of Moral and Political Sciences.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That S. Austin Allibone, Pennsylvania, William C. Bryant, New York, Frederick E. Church, New York, George W. Curtis, New York, Richard H. Dana, Massachusetts, John S. Dwight, Massachusetts, Ralph W. Emerson, Massachusetts, Fitz-Greene Halleck, Connecticut, Oliver W. Holmes, Massachusetts, Henry W. Longfellow, Massachusetts, James R. Lowell, Massachusetts, George P. Marsh, Vermont, Hiram Powers, Ohio, William W. Story, Massachusetts, George Ticknor, Massachusetts, Henry T. Tuckerman, New York, Gulian C. Verplanck, New York, William D. Whitney, Connecticut, John G. Whittier, Massachusetts, Joseph E. Worcester, Massachusetts, their associates and successors, duly chosen, are hereby declared to be a body corporate for the study and cultivation of the ancient and modern languages, letters, and the fine arts, by the name of the National Academy of Literature and Art.

SEC. 2. *And be it further enacted,* That George Bancroft, New York, Henry Ward Beecher, New York, Horace Binney, Pennsylvania, Robert J. Breckinridge, Kentucky, Edward Everett, Massachusetts, Thomas Ewing, Ohio, Henry W. Halleck, Army of the United States, California, Samuel G. Howe, Massachusetts, Charles King, New York, Francis Lieber, New York, J. Lothrop Motley, Massachusetts, John G. Palfrey, Massachusetts, Wendell Phillips, Massachusetts, Alonzo Potter, Pennsylvania, Josiah Quincy, Massachusetts, Henry B. Smith, New York, Jared Sparks, Massachusetts, Robert J. Walker, District of Columbia, Francis Wayland, Rhode Island, Theodore D. Woolsey, Connecticut, their associates and successors,

duly chosen, are hereby declared to be a body corporate for the study and cultivation of history, and the sciences which concern morals and government, by the name of the National Academy of Moral and Political Sciences.

SEC. 3. *And be it further enacted*, That each of these National Academies shall consist of not more than fifty ordinary members, of whom not more than ten shall be elected in any one year; that nominations shall be made and elections held at the regular annual meeting only, and that no nomination for any kind of membership shall be acted upon until it shall have been before the Academy for one year, and shall have been considered by a committee.

SEC. 4. *And be it further enacted*, That each of these National Academies shall have power to make its own organization, including its constitution, by-laws, and rules and regulations; to fill all vacancies created by death, resignation, or otherwise; to provide for the election of foreign and domestic members, what number shall be a quorum, the division into classes, and all other matters needful or usual in such institutions, and to report the same to Congress.

SEC. 5. *And be it further enacted*, That each of these National Academies shall hold an annual meeting at such place in the United States as may be designated, and, whenever thereto requested by any department of the Government, shall investigate, examine, and report upon any subject within their respective provinces: it being understood that the actual expense thereof, if any, shall be paid from appropriations which may be made for the purpose, but the Academies shall receive no compensation whatever for any services to the Government of the United States.

July 2d, the Senate, on Mr. Sumner's motion, proceeded to consider this bill. Mr. McDougall, of California, said: "This attempt at aggregating all power in the General Government tends to destroy the positive exercise of the power of local institutions. . . . . The Senator from Massachusetts . . . . undertakes to present this and other conterminous things as a policy, so as to wipe out the lines of the States and make one grand empire. That may be his policy. I have seen it indicated from various quarters. It is revolutionary. . . . . I have not the right to promote such a corporation; he has not the right to promote such a corporation."

Mr. Sumner replied briefly.

THE answer is very simple. I have in my hand the Statutes at Large, containing what was done by the last Congress. Here is "An Act to incorporate the National Academy of Sciences," approved March 3,

1863, setting forth the names of eminent, not to say illustrious, men of science in our country, and constituting them an Academy of Sciences. It will be remembered that this Academy, during the present winter, met in this Capitol; that one or more of our committee-rooms were set apart for them; and I know that many Senators and gentlemen of the other House took great interest in their meetings. This Academy is devoted to the cultivation of the sciences properly so called.

Mr. McDougall. Will the Senator permit me to interrupt him?

Mr. Sumner. Certainly.

Mr. McDougall. There may be some questions about which the Senator and myself may not understand each other exactly. Of course we have the right to incorporate an institution in the District of Columbia, that is local to the District, by virtue of our general powers of legislation over it; but that is not within the sphere of this legislation, as I understand.

Mr. Sumner. The Act of Congress to which I refer is general in terms; it is not limited to the District; it is a national act to create a National Academy: and the bill before the Senate simply proposes to apply the same principle to gentlemen engaged in the cultivation of literature and art, also to gentlemen engaged in the cultivation of history and those sciences which are connected with morals and government. In the designation of the two academies I have respected the example of France, which is the country that has most excelled in academies of this kind. I believe the Act of Congress is sufficient as a precedent. I do not think there

can be any just constitutional objection; and I am sure that the association, if once organized, would give opportunities of activity and of influence important to the literature of the country. I hope there will be no question about it.

Mr. Doolittle, of Wisconsin, wished to call up a bill from the House of Representatives, relating to certain half-breeds of the Winnebago Indians. "There is no chance of the pending bill passing the House of Representatives. What, then, is the use of taking up time with it here?" Mr. Morrill, of Maine, wished to introduce a bill to provide for the Washington aqueduct. Mr. Hale, of New Hampshire, thought that "at this stage of the session it was a little too late to be engaged in making a close corporation of mutual admirers," and he moved to take up a bill providing for the education of naval constructors and steam-engineers. The last motion prevailed.

NO FINAL ADJOURNMENT OF CONGRESS WITHOUT INCREASED TAXATION.

SPEECH IN THE SENATE, ON THE RESOLUTION OF FINAL ADJOURNMENT, JULY 2, 1864.

JULY 2d, late in the evening, this day being Saturday, it was proposed that the session of Congress should finally close on Monday, July 4th, at noon. Mr. Sumner earnestly opposed this adjournment.

MR. PRESIDENT,—In determining when to adjourn we may be guided by the experience of the past. If earlier Congresses, having less to do, infinitely less, than the present Congress, have found it necessary to continue their sessions through the summer, it is not improper to ask if we should be less industrious and less persevering.

I have in my hand a memorandum of the adjournments of Congress at the long session during the last twenty years. It is most suggestive, at least, even if not commanding to us.

The first session of the Twenty-Ninth Congress closed August 10, 1846. The war with Mexico had just begun. The first session of the Thirtieth Congress ended August 14, 1848. The main discussion of this year was on the Wilmot Proviso. The first session of the Thirty-First Congress lasted till September 30, 1850. This was the session of Compromise. The Fugitive

Slave Act bears date September 18th of this year. The first session of the Thirty-Second Congress did not close till August 31, 1852. During this period the Compromise measures were much discussed, also the Presidential question, and the platforms of the two great parties. It was as late as August 26th that I had the honor of moving the repeal of the Fugitive Slave Act, being one of the Slavery compromises adopted by the previous Congress. The first session of the Thirty-Third Congress adjourned August 7, 1854. This was early for those times. The first session of the Thirty-Fourth Congress adjourned August 30, 1856, Kansas being the constant order of the day. Down to this period there was no adjournment before August, and one Congress sat as late as September 30th. But a change took place.

In 1856 the old *per diem* of eight dollars, as compensation of Senators and Representatives, was transmuted into the present system of compensation by an annual salary of three thousand dollars, be the session long or short. See now what ensued. The first session of the Thirty-Fifth Congress, immediately after the change of pay, closed June 14, 1858; and yet the questions of Kansas and the Lecompton Constitution were uppermost. The first session of the Thirty-Sixth Congress closed June 28, 1860, on the eve of the Presidential election, having been much occupied by the crisis of that historic conflict. Then came the long session of the Thirty-Seventh Congress, which did not adjourn till July 17, 1862, being a remarkable session, which has stored the statute-book with monuments of its industry and patriotism. Such is the record of the past; and now it is proposed to adjourn on the 4th of July.

There are two suggestions with regard to this record, which you will pardon me for making. First, so long as Congress was paid at the rate of eight dollars a day, and salary depended upon the duration of the session, Congress sat late in the season. It is humiliating to think that a consideration apparently so trivial could have had such influence; but such are the facts. The other suggestion is of a different character. It appears, that, while the pretensions of Slavery were to be upheld, Congress was willing to give up the whole summer, even into autumn, to the odious theme. For the sake of an execrable Fugitive Slave Act, and other kindred measures, it bore all these heats, now so insupportable.

Sir, long ago I began the cry that we of the Free States must be as earnest and positive for Freedom as our opponents had always been for Slavery. Why not imitate their example? Business did not draw them away, heat did not drive them away, when Slavery was in question. But Freedom in every form is now in question. There is your army: it must be sustained. There are your finances: must they not be sustained also? There, too, are the great ideas of Freedom involved in this war. Much as has been done to uphold these, more remains to be done.

The question of finances assumes a practical form, and, as I am informed, it is now under discussion in the other House. While they debate an increased taxation, we are here, close upon midnight, considering how to end the session. That subject which of all others is the most difficult and delicate, which touches all the great interests of the country, which cannot be treated in any hasty or perfunctory style, which should

be handled always with supremest caution, and which at the present moment is almost a question of life and death, is still to be considered by the Senate; and yet Senators are willing, by fixing the hour of adjournment, to see this most important debate "cabined, cribbed, confined" to the limits of a few hours, I might almost say minutes. Why, Sir, it has not yet been finally acted on in the other House, and we know not when it can reach us. But we know well, that, whenever it does reach the Senate, the whole vast subject of taxation will be open again. It is understood that the pending proposition is for an increased income tax. In other times, when Senators had not such uncontrollable longings for home, such a measure would have been approached with becoming care. But this is not the only question involved. It is proposed to tax tobacco in the leaf, and thus add millions to the revenue. And then we have again the perpetually recurring question of taxing whiskey on hand, destined to bring into our exchequer yet other millions.

Mr. Trumbull. Have we not considered that?

Mr. Sumner. I understand that at this moment it is under consideration in the other House.

Mr. Trumbull. Has it not been under consideration for months?

Mr. Sumner. Of course it has; but it is under consideration still. The two Houses, as the Senator knows well, have differed. The other House favors taxing whiskey on hand. The Senate has steadfastly resisted the tax. But it is not too late for the Senate to yield, especially when the necessity for more money is apparent, and the late distinguished head of the Treasury has in a formal communication recommended this very tax. There is no way in

which so much money can be had so easily and so justly. Let Congress stay together until the tax is laid. At all events, do not leave without considering it again in the new light. This is my answer to the Senator from Illinois.

But if you are unwilling to tax whiskey on hand, or tobacco, then find something else to tax. But tax you must. Tax, because of the necessity of the case. Tax, because the people ask to be taxed. For the first time in history the phenomenon occurs that the people rise up and demand to be taxed. Unless I err, this is the cry from every quarter. I know it is the cry from my part of the country. It is a patriotic cry, because the people believe further taxation essential to the national credit and the safety of the country. All honor to the people for this invitation to Congress!

And now Congress is about to leave, to flee away, without performing this essential duty. A tax bill has been passed, which already, before going into operation, is pronounced inadequate in an official communication by Mr. Chase. And yet, in despite of this judgment, Senators are willing to go home. It is said we need some hundred million dollars more; and yet, in the face of this asserted necessity, and in the face of that generous demand from every part of the country, which Congress should make haste to gratify, it is now urged that we should abdicate.

Mr. Davis. Mr. President, ——

Mr. Sumner. Let me finish. I will give the Senator from Kentucky a fair opportunity in one moment.

Mr. Davis. I merely wish to ask a question.

Mr. Sumner. Very well; I will answer it.

Mr. Davis. The question I ask the honorable Senator is, whether he is not mistaken as to the subject of this great

demand of the country, — whether, instead of being taxed, it is not to have Slavery abolished everywhere. [*Laughter.*]

Mr. Sumner. Unquestionably there is a great demand to have Slavery abolished everywhere, thank God! I present petitions daily with this prayer. But another demand at this moment is to make the war practical and efficient by all needed supplies; and, as I have said, the people, for the first time in history, ask to be taxed.

Mr. Davis. Where are your petitions from the people for it?

Mr. Sumner. Petitions! They will be found in the public press, and in the communications of constituents. Formal documents are not needed. Gentlemen have arrived here to-night, fresh from the people, who are in themselves more than "petitions." They insist that there must be more taxation. Here, also, is a telegraphic despatch, received this very evening, signed by the first business men of Massachusetts:—

"To Hon. Charles Sumner.

"It will be simply an act of madness for Congress to adjourn without passing bills for large additional taxes, and such other measures as the existing financial crisis demands."

Language could not be stronger. Surely I am right in saying that Congress ought not to turn a deaf ear to this unprecedented prayer. At least, the prayer ought to be considered. For myself, I wish not only to consider it, but to supply the desired taxation, and I ask that Congress shall continue in these seats until the good work is done. Nay, more, Sir, — I protest against any desertion until that work is done.

The great contest in which we are engaged depends not only upon General Grant in the field, but upon

Congress also. If Congress fails to supply the needed means, vain is victory, vain are all the toils of many hard-fought fields. It is through these means supplied by Congress that the future will be secure. Do not deceive yourselves by saying that you have already taxed the country. The late distinguished Secretary of the Treasury, in an authoritative communication, insists that more means are needed. Do not set him aside without at least considering his recommendation. On such an occasion, when perhaps the life of the country is in question, when surely the national credit is at stake, err, if err you must, on the side of prudence.

Mr. President, it is natural that Senators who have been engaged for months in the labors of an anxious session should be glad to escape from the confinement and heat of Washington. I sympathize with them. I wish to be away. I long to leave the capital. Did I allow myself to take counsel of personal advantage, I should be among the most earnest of those now crying for adjournment. Born on the sea-shore, accustomed to the sea air, I am less prepared than many of my friends to endure the climate here. I feel sensibly its sultry heats, and I pant for the taste of salt in the atmosphere. Nor am I insensible to other influences. What little remains to me of home and friendship is far away from here, — where I was born. But home, friendship, and sea-shore must not tempt me at this hour. Lord Bacon tells us, in striking and most suggestive phrase, "The duties of life are more than life." But if ever there was a time when the duties of a Senator were supreme above all other things, so that temptation of all kinds should be trampled under foot, it is now.

An earnest debate ensued, in which Mr. Sumner spoke again.

I TAKE it, Sir, that the proceedings to-night are utterly without precedent in the history of the Senate. It is now more than two hours into Sunday morning. The Senate has on former occasions sat Sunday morning, but it was under the exigency of the Constitution, which brought the session to a close on the 4th of March. There is no such exigency now, and this Sunday morning debate is instituted simply to secure an adjournment of Congress on Monday. That is the single object of all done here to-night,—all these strange proceedings, making a sort of Walpurgis night of Sunday. But I say nothing of incidental matters. I bring home the fact that you now extend your session into Sunday merely that you may hasten away on Monday. It is not for any public exigency; it is not to pass any great measure; it is not to comply with any requirement of the Constitution; but simply to satisfy your own desires or predilections to leave Washington on Monday.

And now, Sir, as to leaving Washington on Monday, we are told that the other House wish to leave, and that it has already disposed of the question of taxation by sending us a proposition for an income tax, and the Senator over the way [Mr. LANE, of Kansas], who tells us he has kept such sharp look-out on the House to-night, announces that all other propositions are discarded, that there is to be no tax on tobacco, no tax upon whiskey on hand, no tax on anything else, for the House has come to its conclusion. Does the Senator know, that, if Congress continues in session twenty-four hours longer, or forty-eight hours longer, the House will not be wiser and more patriotic? Does the Senator who has kept such sharp look-out know that the House will not rise at last to the requirements of the hour?

Here Mr. Sumner was called to order by Mr. Richardson, of Illinois, as reflecting on the other House, and the call was sustained by the presiding officer, who said: "It has been practised too often on the part of Senators to allude to the House of Representatives."

Mr. Sumner. I hope I shall proceed in order. I certainly did not intend to proceed out of order. I was not aware that I was making any reflection on the House of Representatives. We criticize very freely each other; the members of one House criticize the proceedings of the other House; and we criticize the country, and the country criticizes us.

Now, Sir, we are told that the House has disposed of the question of taxation. I am in order when I allude to that. May we not hope, then, that, if the session is extended a little longer, they will see the necessity of increased taxation?

He proceeded to develop again the necessity of taxation for the sake of our finances, and especially of the national debt, "to the payment of which the country is pledged."

Mr. Sumner moved to substitute Tuesday, July 5th, at noon, for Monday, July 4th, at noon. This was lost, — Yeas 11, Nays 22. The resolution of adjournment was then adopted, — Yeas 20, Nays 11.

July 4th, shortly before adjournment at noon, the Senate acted on the House bill imposing a special income tax of five per cent, which was adopted, — Yeas 29, Nays 7.

REJOICING IN THE DECLINE OF THE REBELLION.

Remarks at a Public Meeting in Faneuil Hall, September 6, 1864.

At this meeting Governor Andrew presided and spoke. He was followed by Hon. Alexander H. Rice, Hon. George S. Boutwell, Hon. Henry Wilson, and General Cutler of the Army, when Mr. Sumner was introduced. The report says: "He was received with great cheering and the waving of hats and handkerchiefs for a considerable time." He at length spoke as follows.

Mr. Mayor and Fellow-Citizens: —

LISTENING to the gallant soldier now taking his seat, I was reminded of the saying from the far East, "Words are the daughters of Earth, but deeds are the sons of Heaven." [*Loud applause.*] A noble officer comes before you, fresh from the Army of the Potomac; but he gives words also which in themselves are deeds [*renewed applause*], for he tells you plainly, truly, how to meet the great issue before us. Sir, what has been said so well, so bravely, and so eloquently by the speakers who have addressed you leaves little for me. I have not come to make a speech. The summons was to assemble for congratulation upon those great victories which have given assurance of the integrity of the Union, and I am here for this purpose. [*Applause.*]

We celebrate to-night two victories, — each a heavy blow, under which the Rebellion reels and staggers to

its final fall. [*Cheers.*] Admiral Farragut, by a naval expedition incomparable in the hardihood and skill with which it was planned and executed, has occupied all the approaches of Mobile, so that this important port is now, thank God, hermetically sealed against those English supplies which from the beginning have been the source of encouragement and strength to the Rebellion. [*Applause.*] General Sherman, on his part, by a marvellous succession of battles and of marches, overcoming obstacles interposed by Nature and a stubborn foe, has shown triumphantly that our army can march and then fight, march and then fight again, and conquer [*applause, and "Good!"*], while by the capture of Atlanta he has shattered the very key-stone of the Rebel arch. [*Renewed applause.*] These, fellow-citizens, are the victories we commemorate.

This is a season of joy, not that fellow-citizens in arms against us have been overcome, not that blood is flowing, not that fields and villages and towns are smoking, but that our country is redeemed from peril, and the public enemy is beaten down under our feet. [*Long continued applause.*] Such is the occasion of rejoicing to-night. Hearts overflow, eyes glisten, the voice cries out with gladness, the heart echoes to the booming cannon, and victory thrills us all with its bewitching, triumphant music. This, Sir, is the time to rejoice: for there is a time to lament, and there is a time also to enjoy; and this is a time for joy. "Blow, bugles, blow! set all your wild notes flying!"

Unhappy those who cannot unite in our joy! Unhappy those who, as they listen to the triumphant salvos, to the swelling music, and to these exultant voices here to-night, cannot echo them back with gladness in

their hearts! Unhappy all such, who call themselves by the American name! And why can they not rejoice? Alas! it is because their sympathies are with the enemy, or because they place party above country, even to the extent of seeing that country cut in twain [*A voice, "Shame!"*], like the false mother who appeared for judgment before Solomon. The wise monarch clearly perceived that a woman ready to see her child divided in two was a false mother: so may we all clearly perceive that people ready to see their country divided in two are false citizens. The judgment of Solomon stands good to this hour, against all showing such perfidious insensibility.

Fellow-citizens, these Northern renegades (I like to call things by their proper names, and I thank my honored friend who preceded me for his exposition, telling how near they come to being traitors) — these Northern renegades are nothing else than unarmed guerrilla bands of Jefferson Davis, marauding here at the North. [*Loud cheers.*] They cry out, "*Peace!*" — but, fellow-citizens, are we not all for peace? Sir, are you not for peace? Are not all the honored gentlemen by whom I am surrounded for peace? Peace is the sentiment, the longing, the passion of my life. Not Falkland in the bloody days of the English civil war cried, "*Peace! Peace!*" more fervently than I do now. For me the day begins, continues, and ends with this aspiration; but it is precisely because I am thus determined for peace, because peace is with me such a be-all and end-all, that I now insist, at all hazards, that this Rebellion shall be overthrown and trampled out at once and utterly, so that it shall never again break forth in blood. [*Loud cheers.*] In the name of peace, and for the sake of

good-will among men, do I now insist that this Rebellion shall be so completely blasted as to leave behind no root or remnant which may become the germ of future war.

Fellow-citizens, let me be frank, for such is my habit, here, or wherever else I have the honor to speak. In vain do you expect to destroy the Rebellion, unless you destroy Slavery [*applause*]; for Slavery, be assured, is but another name for the Rebellion. The two are synonyms; they are convertible terms. The Rebellion is but Slavery in arms, whether on land or on sea; on foot, on horseback, or afloat, it is ever belligerent Slavery, warring to establish a wicked empire. If you are against one, you must be against the other. If you are ready to strike Rebellion, you must be ready to strike Slavery. If you are ready to strike Slavery, you must be ready to strike Rebellion. The President was clearly right, when, in a recent letter, he declared that he should accept no terms of peace which did not begin with the abandonment of Slavery. [*"Good!" and cheers.*] The Union cannot live with Slavery. Nothing can be clearer. If Slavery dies, the Union lives; if Slavery lives, the Union dies. God save the Union!

And now, fellow-citizens, it only remains that you should comprehend the grandeur of the cause and of your position. Consider well the Thermopylæ pass in which you stand battling for Liberty, — not only here at home, but everywhere throughout the globe; and forget not, that, if you take care of Liberty, the Union will take care of itself, — or, better still, know, that, if you save Liberty, you save everything. [*Loud cheers.*]

REPUBLICAN PARTY AND DEMOCRATIC PARTY.

Speech at a Public Meeting at Faneuil Hall, to ratify the Republican Nominations for President and Vice-President, September 28, 1864.

Hon. John C. Gray presided at this meeting.

FELLOW-CITIZENS, — I do not speak to-night in the belief that anything in the way of speech, from me or anybody else, can add to the certainty that Abraham Lincoln will be reëlected President of the United States. This event is already fixed beyond doubt or question. [*Applause.*] It is the clear, palpable, visible will of the American people, which only waits the official record of the 8th of November next. The case is plain. Everybody who voted for him four years ago will vote for him now, while others, like Edward Everett [*cheers*], who voted against him before, will gladly range among his supporters. Here is a sum of simple addition, requiring very little arithmetic. But it is not astonishing that persons who have lost their patriotism should lose the power of calculation also.

And here let me remark, that, in taking a place at the head of our ticket,[1] the distinguished gentleman to whom I have referred renders a patriotic service, and sets an example to all Bell-Everett men, who do not

[1] Mr. Everett was one of the Republican Electors at Large.

prefer to follow Bell rather than Everett. If any belonging to that extinct combination vote against Edward Everett, it will be only to find themselves in the company of the traitor, John Bell. If you choose to give them a designation, let it be simply "Bell men." It remains to be seen how many, at this crisis, prefer the traitor to the patriot. These two names, once in conjunction, now represent the two hostile ideas of Rebellion and Patriotism.

Even if the election be certain, our duty is none the less imperative. It is certain, because every good citizen will do his duty, and will see that his neighbor does it, too. It is certain, because, thank God, Patriotism at the North is stronger than Rebellion. [*Cheers.*] But we must all unite to make it gloriously certain.

I have often, on former occasions, when addressing my fellow-citizens, put the question, "Are you for Freedom, or are you for Slavery?" — and I put this question now; for it is the question which necessarily enters into the coming election. On the answer hinges absolutely the peace of our country and the perpetuity of our institutions. Therefore I put the question in another form: "Are you for your country, or are you for the Rebellion?" That is the question to decide by your votes. It is vain to evade this question, vain to wink it out of sight. It will come to every man as he puts in his vote, and he should decide it sincerely, patriotically, religiously.

And now, that I may bring this responsibility home to mind and conscience, I have no hesitation in saying, that, in voting against Abraham Lincoln, you will not only vote against Freedom and for Slavery, but you will vote against your country and for the Rebellion, — in

short, you will give the very vote which Jefferson Davis would give, were he allowed to vote in Massachusetts. No matter under what excuse this may be done, no matter by what argument you may deceive yourselves, no matter what apology you may construct, founded, perhaps, on personal objections or personal partialities, — it will be all the same. Your vote will be a vote against Freedom, — ay, Sir, a vote against your country. Just to the extent of its influence, you will give aid and comfort to the Rebel enemy, and will prevent the restoration of Union and Peace.

There can be no third party now, whether in the name of moderation or in the name of progress, — as there can be no third party between right and wrong, between good and evil, between the Almighty Throne and Satan. There can be but two parties here. Choose ye between them. One is the party of the country, with Abraham Lincoln as its chief, and with Freedom as its glorious watchword; and the other is the party of the Rebellion, with Jefferson Davis as its chief, and with no other watchword than Slavery. As in the choice of Hercules, there are here before you two roads, — one leading to virtue and renown, the other leading to crime and shame. Choose ye between them. Vote against Abraham Lincoln, if you can, or stay at home and sulk, if you will; you have only, as a next step, to go over to the enemy.

There is now no question of candidates; there is no question of men. Candidates and men, no matter who, are all insignificant by the side of the cause. It is the cause we sustain and would bear, as the ark of the covenant, on our shoulders. Therefore I put aside all that is said of the two candidates. It would be useless to

attempt comparison between them, although it might appear, that, in those matters where one has been most criticized, the other is in the same predicament, — that, if Lincoln is slow, McClellan is slower, — that, if Lincoln has employed the military arm in the arrest of individuals, McClellan has employed it in the arrest of a whole Legislature, — and that, if Lincoln drove Vallandigham out of the Union lines as a penalty for sedition, McClellan drove the Hutchinsons out of the Union lines as a penalty for singing songs of Freedom. But why consider these petty personalities? They divert attention from the single question, "Are you for your country, or are you for the Rebellion?" [*Applause.*]

I have said that there are but two parties. If you would understand their respective characters and their claims to support, glance, first, at their history, and then at the principles they have recently declared.

On one side is the Republican party, originally formed to check the encroachments of Slavery, and especially to save the vast territories of the Republic, preserving them forever sacred to Freedom. Such a party, originally formed with such an object and inspired by Freedom, was the natural defender of the Republic, when Slavery took up arms against it. To this end it has labored, and to this end it will continue to labor, until, by the blessing of God, the Union is once again restored. I call it the Republican party, because that was its early name; but, for myself, I am indifferent to the name by which you call me. Let it be Republican, Unionist, or Abolitionist, what you will, I am with those patriots who stand by their country, seeking its safety and renown. [*Great applause.*]

It is sometimes asked, What has the Republican

party done? Look around, and you will see everywhere what it has done. Its acts are historic. Slavery and the Black Laws all abolished in the national capital; Slavery interdicted in all the national territories; Hayti and Liberia recognized as independent republics in the family of nations; the foreign slave-trade placed under the ban of a new treaty with Great Britain; the coastwise slave-trade prohibited forever; all persons in the military or naval service prohibited from returning slaves; all Fugitive Slave Acts repealed; the rule excluding colored testimony in the national courts abolished; and slaves set free in the Rebel States by Presidential proclamation: such are some of the triumphs of Freedom, under the auspices of the Republican party. [*Cheers.*] But this is not all. The Pacific Railroad is at last authorized; agricultural colleges are provided for; homesteads on the public lands are offered to all actual settlers; while, by special legislation, emigration is encouraged and organized. But beyond all these measures, any one of which in other days would have illumined a whole administration, the National Government, acting in self-defence, with Abraham Lincoln as its head, has set on foot one of the largest armies of which there is any authentic record, — has equipped a navy which, in the variety and completeness of its power, with all modern improvements, may vie with any in the world, — while, by a most successful financial system, including banks and credit, it has obtained the unprecedented sums required for all this enormous preparation.

All this is the work of the Republican party in less than a single Presidential term. [*Prolonged applause.*] It remains for this party to crown its transcendent la-

bors by completing the triumph of the Union, and by establishing peace on the indestructible foundation of human rights. I regard it as an honor to belong to this party, so great in what it has already accomplished, and greater still in what it proposes. Other parties have performed their work and perished. The Republican party will live forever in the gratitude of all who love Liberty and rejoice in the triumphs of Civilization. Foreign countries will take up the strain, while the down-trodden and the oppressed everywhere confess that their burdens have been lifted by an irresistible influence which we are assembled to advance. [*Applause.*]

Against the Republican party, thus patriotic, and already illustrious by achievements, is arrayed the old Democratic party, galvanized into new life, and reinforced by members of the old Bell-Everett party who prefer Bell to Everett. In this strange combination, where Herod and Pilate are made friends to destroy human freedom, there seems but one single element of cohesive attraction, and that is Slavery; and these men all call themselves Democrats.

Pardon the frankness with which I speak: it is needful in order to disclose the actual character of the Opposition. For a true Democracy, founded on the rights of man, I have an unfeigned respect; but for a pretended Democracy, founded on human slavery, and existing only for this enormous crime, I have no respect. It is an inconsistency in terms. It is a flat contradiction. It is a cheat and a sham. And such is the Democracy which here in Massachusetts, headed by Robert C. Winthrop, now arrays itself against the party of Union, headed by Edward Everett. But it is

plain, that, in pursuing this course, it follows naturally and simply the traditions of the party.

I have exhibited something of the good accomplished by the Republican party. See now what has been done by the Democratic party, and then say what evil may not be expected from it.

For years the Democratic party has been the supporter of Slavery, prompt in yielding to its insatiate demands.

Look at the Rebellion from beginning to end, and you will find it has been engineered by Democrats.

You cannot forget that James Buchanan, a Democrat, was President, surrounded by a Democratic Cabinet, while the Rebellion was allowed to organize and gather strength without interruption.

Wherever you look in the Rebellion, there you find the old Democracy, into which is absorbed John Bell and his followers, arrayed against their country.

Look at individuals; you find that the larger half, constituting the controlling power of the old Democratic party, are now in arms against their country.

Look at States; you find that all in rebellion were at its outbreak Democratic States.

Look at the present upholders of the Rebellion, and you find that all, without exception, most active, were Democrats, — that Jefferson Davis, the President, so tenacious and uncompromising, was a Democrat, — that Stephens, the audacious Vice-President, who announced that the new Government was founded on Slavery as its corner-stone, was an old Whig turned into a Democrat, — that all the Rebel Cabinet were Democrats, — that the President of the Rebel Senate and the Speaker

of the Rebel House were Democrats, — that James M. Mason and John Slidell, the Rebel emissaries in Europe, were Democrats, — that the officers, who, after obtaining their education at West Point at the public expense, threw up their commissions and lifted parricidal hands against their country, Hood, Beauregard, Johnston, Lee, were all Democrats.

Naturally, the Northern associates and allies of these Rebels are engaged in devising apologies for Rebellion. Naturally, they are against all energetic measures for its suppression; they call for a "cessation of hostilities," and seek to throw over their companions of other days every possible protection, especially seeking by all means to save their darling Slavery. But they ought not to find sympathy with patriot citizens, — especially against the Republican party, which, in its open and unconditional patriotism, and in all its manifold works, is in marked contrast with the Democracy.

Fellow-citizens, in all this vast Union, whether as it was or as it is, there is not a single Republican in arms against the Government, or sympathizing with those who are. There is not a traitor among them. Here is a distinction between the two parties broad as the space between earth and heaven. [*Great applause.*]

I would not confound the innocent with the guilty. I know full well that among the honest masses there are many, once Democrats, who have given their lives to their country, and there are some of the old leaders at the North who have spurned all the traditions of the party. All honor and gratitude to them! There, also, are our generals, — Grant, Sherman, Hooker, Butler, — a goodly cluster, — once Democrats, but now forgetting

party and dedicating themselves completely to their country. But the patriotism of Democrats like these is not an apology for the Democrat Jefferson Davis, or for his Democratic sympathizers among us, seeking to arrest the strong blows under which Rebellion reels. I do not forget, also, that there are good men, who, under misapprehension of some kind, and without seeing all the bearings of their conduct, have allowed themselves to be swept into the Democratic ranks. But such as these can be no cloak to that Democratic party which at Chicago openly struck hands with Jefferson Davis, and undertook to do for him what he cannot do for himself.

It is because the Democratic party is at this moment so utterly mischievous and disloyal, so really dangerous to our country, and so bitterly hostile to Liberty, that I speak thus plainly. Soft words will not do in exposing that combination at Chicago, where the two factions commingled into one. Call them, if you please, Pharisees and Sadducees. [*Laughter.*] They are something more, and something worse, if possible. They are the unarmed guerrilla bands of Jefferson Davis, who have stolen into the Free States. I have used this language before. If I repeat it now, it is because I wish to put you on your guard against criminal marauders, who, at this moment of peril, are ready to prey upon their country.

If you would see the difference between the two parties, read the speeches and resolutions at Baltimore, and then the speeches and resolutions at Chicago. I have no time for details, even if the transactions at these two Conventions were not still fresh in the memory. Suffice it to say that the Convention at Baltimore openly

and frankly pledged all its energies to the suppression of the Rebellion, and to the utter and complete extirpation of Slavery from the soil of the Republic, without compromise or hesitation of any kind. This was noble and patriotic. But nothing of this kind was done at Chicago.

The Chicago platform may be seen in two aspects, — first, in what it does say, and, secondly, in what it does not say. There are two things it does say: first, that the war for the suppression of the Rebellion is a failure; and, secondly, that there should be a cessation of hostilities. There are two things it does not say: first, it does not say anything against the Rebellion; and, secondly, it does not say anything against Slavery. And candidates are nominated on this platform. In voting for them, you affirm that the war has failed and that it ought to be stopped, while you decline to say anything against the Rebellion or against Slavery. You declare that our recent triumphs were all failures, that Grant failed at Vicksburg, that Sherman failed at Atlanta, that Farragut failed at New Orleans and Mobile, that Winslow failed against the Alabama, and that Sheridan failed in the Valley of the Shenandoah; and you further declare that all these heroes should be arrested in mid-career, while Democratic agencies take their place, and rose-water is substituted for cannon-balls. And you declare, also, that the Rebellion shall prevail, and that Slavery shall continue to degrade our country and be the seed of interminable war. All this you affirm and declare by your votes.

If anything were needed to illustrate the offensive character of this platform, it would be found in the

efforts made to get away from it, — at least in this latitude. Nobody here is willing to trust it. The cry of the railroad conductor is transferred to politics, — "It is dangerous to stand on the platform." [*Laughter.*] Nobody has made greater efforts to get away from it than the Presidential candidate of the Democracy, who forgets, that, as a candidate, he is born with the platform, and united to it, as the Siamese twins are united together, so that the two cannot be separated. As well cut apart Chang and Eng as cut apart McClellan and Chicago. [*Laughter.*] The two must go together.

The letter of McClellan is a specimen of "how not to do it." This is the prevailing idea, — how not to stand on the platform, how not to offend the Rebels, and how not to touch Slavery. It is an ingenious wriggle and twist; but so far as the writer succeeds in getting off the platform, it is only to run upon other difficulties, — as from Scylla to Charybdis. The platform surrenders to the Rebellion; the letter surrenders to Slavery. But the Rebellion is nothing but belligerent Slavery; so that surrender to Slavery is surrender to the Rebellion. The platform discards the Union; but the letter, while professing a desire for union, discards Emancipation, without which union is impossible; and while professing a desire for peace, it discards Liberty, through which alone peace can be secured. The letter says: "The Union is the one condition of peace: *we ask no more.*" The Democratic candidate may ask no more; but others do. *I ask more,* because without more the Union is but a name. I ask more for the sake of justice and humanity, and that this terrible war may be vindicated in history. The Baltimore Convention, in its resolutions, *asks more.* Abraham Lincoln *asks more.* The country

takes up the demand of the Baltimore Convention and of Abraham Lincoln, and *asks more.* [*Applause.*]

I have said that Abraham Lincoln *asks more.* He has asked it again and again. He asked it in his Proclamation of the 1st January, 1863, when, as commander-in-chief of the army and navy of the United States, he ordered and declared that the slaves in the Rebel States "are and *henceforward shall be free,* and that the Executive Government of the United States, including the military and naval authorities thereof, *will recognize and maintain the freedom of said persons.*" And he asked it again, when, in his notice "To whom it may concern," he announced that all terms of peace must begin with "the abandonment of Slavery."[1] But, in face of these declarations, the candidate of the Democrats mumbles forth, "The Union is the one condition of peace: *we ask no more.*"

It is a strange infatuation which imagines that the Rebellion can be closed without the entire abolition of Slavery. The Rebellion began with Slavery, and it will end with Slavery. As it began in no other way, so it can end in no other way. Born from Slavery, it must die with Slavery. Therefore do I insist that Slavery shall not be spared; for, in sparing Slavery, you spare the Rebellion itself. [*Applause.*]

But even if reason and the necessity of the case did not require the sacrifice, it is now too late, thank God! By the Proclamation of the President the freedom of all slaves in the Rebel region is secured beyond recall. That gift cannot be taken back. It was a saying of Antiquity, repeated by an exquisite poet of our own day,

[1] Note in reference to Peace Overtures at Niagara Falls, July 18, 1864. See Raymond's Life of Lincoln, p. 580.

that "the gods themselves cannot recall their gifts." But even if other gifts may be recalled, the gift of Freedom cannot; for its recall would be the sacrifice of human rights. Every slave declared free by that Proclamation is entitled to his freedom as much as you and I. The President himself, empowered to confer freedom, is impotent to make a slave. Look at the question as you will, in the light of morals or of jurisprudence, and the answer is the same. There is the promise of the Proclamation, by which the public faith of the country is irrevocably pledged that certain slaves "shall be henceforward free," and their freedom shall be "recognized and maintained"; and this promise, according to morals, cannot be taken back. Still more, according to jurisprudence, it cannot be taken back; for "Once free, always free" is a prevailing maxim, and no court, sitting under the Constitution, and inspired by the Declaration of Independence, can venture to limit or restrain a proclamation of freedom, made in the exercise of war powers for the suppression of rebellion. It is vain to say that the slaves are not now in our power. This is a proper argument for the enemy, but not for any court of the United States. Every such court refusing to recognize the act of the President will stultify itself and shock the judicial conscience of mankind. It is enough that the Proclamation has declared the slaves free. There is not a slave in the Rebel region who may not look to it for protection, while it overarches all like a firmament, which human effort will strive in vain to drag down. [*Applause.*]

Do you need authority for this principle? Let me read you the emphatic and well-considered words of Postmaster-General Blair: —

"The people once slaves in the Rebel States can never again be recognized as such by the United States. No JUDICIAL DECISION, NO LEGISLATIVE ACTION, STATE OR NATIONAL, can be admitted to reënslave a people who are associated with our own destinies in this war of defence to save the Government, and whose manumission was deemed essential to the restoration and preservation of the Union, *and to its permanent peace.*"[1] [*Applause.*]

This is noble doctrine; and it is none the less noble because from a member of the Cabinet sometimes supposed to hesitate where Freedom is in question.

See, then, into what denial of just principles, as well as inconsistencies, you are led, when you follow the Democratic candidate in rejecting Freedom as the corner-stone of Union.

But I have said enough. The case is too plain for argument. Let me give it to you in a nutshell.

A vote for McClellan will be, first and foremost, a vote for Slavery, at a time when this crime has plunged the country into the sorrow and waste of war.

It will be, also, a vote for the Rebellion, at a moment when the Rebellion is nigh to fall.

Also, a vote for Disunion, at a moment when the Union is about to be made inseparable.

But disunion, when once started, cannot be stopped; so that a vote for McClellan will be a vote to break this Union in pieces, and to set each State spinning in space.

It will be a vote for chronic war among fellow-citizens, ever beginning and never ending, until the fate of Mexico will be ours.

[1] Speech at Cleveland, May 20, 1863: Comments on the Policy inaugurated by the President, p. 11.

Also, a vote for the repudiation of the national debt, involving the destruction of property and the overthrow of business.

Also, a vote for anarchy and chaos at home.

Also, a vote for national degradation abroad.

Also, a vote against the civilization of the age.

Also, a vote for the kingdom of Satan on earth.

On the other hand, a vote for Abraham Lincoln will be, first and foremost, a vote for Freedom, Union, and Peace, that political trinity under whose guardianship we place the Republic. It will be a vote, also, to fix the influence and good name of our country, so that it shall become the pride of history. It will be a vote, also, for civilization itself. At home it will secure tranquillity throughout the land, with freedom of travel and of speech, so that the eloquence of Wendell Phillips may be enjoyed at Richmond and Charleston as at New York and Boston, and the designation of "Border States," now exclusively applicable to interior States, will be removed, so that our only "Border States" will be on Canada at the North and Mexico at the South. Doing all this at home, it will do more abroad; for it will secure the triumph of American institutions everywhere. [*Great applause.*]

Surely all this is something to vote for. And you will not hesitate. Forward, then, — in the name of Freedom, Union, and Peace! Crush the enemy everywhere. Crush him on the field of battle. Crush him at the ballot-box. And may the November election be the final peal of thunder which shall clear the sky and fill the heavens with glory! [*Prolonged cheers.*]

SLAVERY AND THE REBELLION ONE AND INSEPARABLE:

ISSUES OF THE PRESIDENTIAL ELECTION.

Speech before the New York Young Men's Republican Union, at Cooper Institute, November 5, 1864.

The following speech[1] was delivered by Senator Sumner at Cooper Institute, New York, on the afternoon of Saturday, November 5, 1864, before one of the largest audiences ever assembled within the walls of that capacious hall. By this publication, the Young Men's Republican Union, at whose invitation the speech was delivered, brings to a close the arduous labors of its third Presidential campaign, — the last of a series of political battles, begun, prosecuted, and completed in the interest and for the furtherance of the principles so nobly and eloquently reasserted in the Massachusetts Senator's last and greatest speech.

Among the auditors, on this occasion, were at least two hundred clergymen, of all denominations, from New York, Brooklyn, Newark, and other adjacent cities. Not less than one thousand ladies, and an equal number of the most eminent citizens of New York, also aided to swell the crowd that assembled to do honor to the distinguished orator, and to express the sympathy and interest they felt in the great cause in whose behalf he was announced to plead.

Besides Francis Lieber, LL. D., the widely known Professor of Political Science in Columbia College, who was chosen Chairman of the meeting by acclamation, there were upon the platform many of the men and women of New York whose names and deeds in various walks of life have illustrated the annals of Freedom's trials and triumphs in America.

Dr. Lieber, upon taking the chair, made a brief and appropriate address, at the close of which he introduced Hon. Edwin D. Morgan, who read a telegram, received from San Francisco, giving assurance of a Union victory in California: the reading of this despatch was hailed with applause and cheers. When order had been restored, the Chairman presented the orator of the occasion, who was made the recipient of an ovation such as has seldom been accorded to a speaker in New York.

The speech, throughout, was received with every evidence of enthusiasm and approval on the part of the vast audience, the applause frequently interrupting the speaker for several moments, and at times causing the hall to become the scene of the wildest excitement. Few of those who were successful in securing admission on this occasion will forget the rounds of applause, the hearty cheers, the clapping of fair hands, and the waving of hundreds of snowy handkerchiefs, by which the swarming crowd so often testified its appreciation of Mr. Sumner's scholarly diction, effective eloquence,

[1] This Introduction, by the Committee of the Young Men's Republican Union, appeared as a "Prefatory Note" to the New York pamphlet edition.

and patriotic, statesmanlike utterance of these great political truths. It is but simple truth to say, that none of the many political meetings of the campaign, in New York, could at all compare with this mass meeting of the flower of our citizenship, whether regard be had to the numbers, intelligence, social position, or sound sentiments of loyalty, which were the characteristics of the great gathering of November 5th, 1864.

SPEECH.

FELLOW-CITIZENS, — In all the concerns of life, the first necessity is to see and comprehend the circumstances about us. Without this knowledge human conduct must fail. Without this knowledge the machine cannot be worked, the ground cannot be tilled, the ship cannot be navigated, war cannot be waged, government cannot be conducted. The old Greek, suddenly enveloped in a cloud while battling with his enemies, exclaimed, "Give me to see!" — and this exclamation of the warrior is the exclamation, also, of every person in practical life, whether striving for country or only for himself. "Give me to see," that I may comprehend my duty. "Give me to see," that I may recognize my enemy. "Give me to see," that I may know where to strike.

The wise physician, before any prescription for his patient, endeavors, by careful diagnosis, to ascertain the nature of the disease or injury, and when this is done, he proceeds with confidence. Without such knowledge all medical skill must fail. You do not forget how it failed in the recent case of the Italian patriot, Garibaldi, suffering cruelly from a wound in the foot, received at the unfortunate battle of Aspromonte, which for a long time nobody seemed to understand. Eminent

surgeons of different countries were at fault. At last Nélaton, the liberal professor of the Medical School at Paris, leaving pupils and patients, journeyed into Italy to visit the illustrious sufferer. Other surgeons said that there was no ball lodged in the foot; the French surgeon, after careful diagnosis, declared that there was, and at once extracted it. From that time Garibaldi gained in health and strength, thanks to his scientific visitor, who was enabled to understand his case.

Nowhere is diagnosis more important than in national affairs. Men are naturally patriotic. They love their country with instinctive love, quickened at the mother's knee, and nursed in the earliest teachings of the school. For country they offer fortune and life. But while thus devoted, they do not always clearly see the line of duty. Local prejudice, personal antipathy, and selfish interest obscure the vision. And far beyond all these is the disturbing influence of "party," with all the power of discipline and organization added to numbers. Men attach themselves to a political party as to a religion, and yield blindly to its behests. By error of judgment, rather than of heart, they give up to party what was meant for country or mankind. I do not condemn political parties, but warn against their tyranny. A patriotic Opposition, watchful of the public service, is hardly less important than a patriotic Administration. They are the complements of each other, and, even while in open conflict, unite in duty to country. But a political party which ceases to be patriotic, which openly takes sides with Rebellion, which sends up "blue lights" as a signal to an armed foe, or which subtly undermines those popular energies now needed for the national defence, that the Republic may live, — such a party is an

engine of frightful evil, to be abhorred as "the gates of hell." It is, unhappily, an evil of party always, even in its best estate, that it tends to dominate over its members, so as to create an oligarchical power, a sort of *imperium in imperio*, which may overshadow the Government itself. This influence becomes disastrous beyond measure, when bad men obtain control or bad ideas prevail. Then must all who are not ready to forget their country consider carefully the consequences of their conduct. Adherence to party may leave but one step to treason.

Fellow-citizens, I address you as patriots who love their country and would not willingly see it suffer, who rejoice in its triumphs and long to behold its flag furled in peace. But it is the nature of true patriotism to love country most when it is most in peril. As dangers thicken and skies darken, the patriot soul is roused by internal fire so that no sacrifice seems too great. And now, when the national life is assailed by traitors at home, while foreign powers look on with wicked sympathy, I begin by asking that you should forget "party" and all its watchwords. Think only of country.

There is much misconception, even among well-meaning persons, with regard to the object of the war, while partisans do not tire of misrepresenting it. A plain statement will show the truth as it is.

It is often said that the object of the war on our part is simply to restore the Constitution, and much mystification is employed with regard to the essential limits of such a contest. Mr. Crittenden's resolution, adopted

by both Houses of Congress, declared that the war was "not waged on our part in any spirit of oppression, or for any purpose of conquest or subjugation, *or purpose of overthrowing or interfering with the rights or established institutions of the Southern States,* — but to defend and maintain the supremacy of the Constitution, and to preserve the Union, *with all the dignity, equality, and rights of the several States unimpaired.*"[1] I rejoice to remember that I did not vote for this resolution. It was unsatisfactory to me at the time, and is more unsatisfactory now. While plausible in form, it was in the nature of a snare.

Again, it is said that the object of the war is to abolish Slavery. This, also, is a mistake, although it is generally urged by those who seek occasion to criticize the war, and therefore it is in the nature of misrepresentation. At the beginning of the war, and during its early stages, Slavery was left untouched, in the enjoyment of peculiar immunity, such as was accorded to no other Rebel interest. If this peculiar immunity has been discontinued, it is only because Slavery is at last seen in its true character, and because its absolute identity with the Rebellion has come to be recognized.

Not, then, to restore the Constitution, not to abolish Slavery, do we go forth to battle, — for neither of these, — but simply *to put down the Rebellion.* It is this, and nothing more. Never in history was there a war with an object so manifest. If, in the process of putting down the Rebellion, the Constitution shall be completely restored or Slavery shall be completely abolished, the war will still be the same in essential object.

[1] House Journal, 37th Cong. 1st Sess., July 22, 1861, p. 123; Senate Journal, July 25, 1861, p. 92. See, also, *ante*, Vol. V. p. 499.

From its origin you will see its true character beyond question. Certain slave-masters, after long years of conspiracy, rose against the Republic and struck at its life. The reason assigned for this parricide was strange as the deed. It was simply because the people of the United States, by constitutional majority, according to prescribed forms of law, had elected Abraham Lincoln as President. On this alleged reason, and to defeat his administration, Rebellion was organized. You are familiar with the succession of parricidal blows that ensued. State after State, beginning with South Carolina, always traitorous, undertook to withdraw from the Union. Their Senators and Representatives in Congress actually withdrew from the National Capitol, leaving behind menaces of war. Custom-houses, post-offices, mints, arsenals, forts, all possessions of the National Government, one after another, were seized by the Rebel slave-masters. As early as the 1st of January, 1861, while James Buchanan was President, the palmetto flag was hoisted over the custom-house and post-office at Charleston. Already it had been hoisted over Castle Pinckney and Fort Moultrie in the harbor of Charleston, while the national force allowed in these fortresses surrendered to Rebel slave-masters. This was followed by the seizure of Fort Pulaski at Savannah, Fort Morgan at Mobile, Fort Jackson and Fort St. Philip at New Orleans, Fort Barrancas and Fort McRae with the navy-yard at Pensacola. Throughout that whole Rebel region two fortresses only remained to the National Government: these were Fort Sumter and Fort Pickens. The steamer Star of the West, bearing reinforcements to the small garrison cooped in Fort Sumter, was fired at in the harbor of Charleston,

and compelled to put back discomfited. This was war. Meanwhile the Rebel States had taken the form of a confederacy, with Slavery as corner-stone, and proceeded to organize an immense military force in the service of the Rebellion. At last, after long-continued preparations, the Rebel batteries opened upon Fort Sumter, which, after a defence of thirty-four hours, was compelled to surrender. There was rejoicing at the Rebel capital, and the Rebel Secretary of War, addressing an immense audience, let drop words which reveal the true character of the war. "No man," said he, "can tell where the war this day commenced will end; but I will prophesy that the flag which now flaunts the breeze here will float over the dome of the old Capitol at Washington before the 1st of May. Let them try *Southern chivalry* and test the extent of Southern resources, and it may float eventually over Faneuil Hall itself."[1] It was already the 12th of April, and the Rebel flag was to float over the National Capitol before the 1st of May. It was time that something should be done in self-defence. Not only the National Capitol, but Faneuil Hall, was menaced, while the boast of "Southern chivalry" went forth.

Thus far the National Government had done nothing, absolutely nothing. It had received blow after blow; it had seen its possessions, one after another, wrested from its control; it had seen State after State assume the front of Rebellion; it had seen the whole combined in a pseudo-confederacy, with a Rebel President surrounded by a Rebel Cabinet and a Rebel Congress; and it had bent under a storm of shot and

[1] Duyckinck's History of the War for the Union, Vol. I. p. 118. See also Stephens's Constitutional View of the late War between the States, Vol. II. p. 415.

shell from Rebel batteries. At last it spoke, calling the country to arms. Search history, and you can find no instance of equal audacity on the part of rebels, and no instance of equal forbearance on the part of Government.

The country was called to arms. Nobody can forget that day, when the people everywhere, inspired by patriotic ardor, rose in *necessary self-defence* to save the National Capitol and Faneuil Hall, already menaced. For the Rebellion the war had begun long before; but for the country it began only at that great uprising, when all seemed filled with one generous purpose, and nobody hesitated. Men calling themselves Democrats vied with Republicans. Daniel S. Dickinson and Benjamin F. Butler made haste to join their country. Party differences were forgotten as the tocsin sounded.

It was the tocsin summoning the country to defend itself. The war then and there recognized was, on our part, a war of national defence, and its simple object was to put down the Rebellion. You confuse yourself, if you say that it was to restore the Constitution; and you misrepresent the fact, if you say that it was to abolish Slavery. It was for the suppression of the Rebellion, — nor more, nor less.

Here, then, fellow-citizens, it becomes important to know and comprehend the Rebellion, and especially its animating impulse, or soul. From the beginning, its diagnosis has been essential to the right conduct of the war; and if at any time the war seems to fail, or foreign powers seem to lower, it is because our Government has not recognized the true character of the Rebellion. "Give me to see," is the exclamation of every

patriot, that our blows may not fail. To all familiar with history it was obvious, at once, that this Rebellion stood out in bad eminence, unlike any other of which we have authentic record; that it was not a dynastic struggle, as in the adventurous expeditions of the British Pretender; that it was not a religious struggle, as in the French wars of the League; that it was not a struggle against a conqueror, as in the repeated outbreaks of Ireland; that it was not a struggle for Freedom, like that of Switzerland against Austria, of Holland against Spain, of our fathers against England, of the Spanish-American States against Spain, and of Greece against Turkey; that it had in it none of these elements, whether dynasty, religion, or freedom: for it was simply a struggle for Slavery, and so completely had Slavery entered into and possessed it that the Rebellion was changed to itself. If you would find a parallel to this transcendent wickedness, you must pass "the flaming bounds of place and time," and look on that earliest Rebellion, when Satan strove against the Almighty Throne to establish the supremacy of Sin, even as now this insensate Rebellion strives to establish the supremacy of Slavery. It is because partisans have failed to see the true character of the Rebellion, or been unwilling to recognize it, that they do not feel how absurd it is to say that the war on our part has been changed, when nothing has been done but to recognize the identity between Slavery and the Rebellion. There has been no change. It is still a war to put down the Rebellion; but we are in earnest, and are determined that the Rebellion shall not save itself by skulking under the *alias* of Slavery. Call it Rebellion or call it Slavery, it is one and the same.

A glance at the immediate origin of this war is enough for the present occasion. But to dispel all darkness, and to determine our duty, let me take you, for a few moments, back to the distant origin of the two elemental forces now in deadly conflict.

Looking at the question abstractly, these two elemental forces are nothing but Slavery and Liberty. It is superfluous to add that these are natural enemies, and cannot exist together. Where Slavery is, there Liberty cannot be; and where Liberty is, there Slavery cannot be. To uphold Slavery, there must be uncompromising denial of Liberty; to uphold Liberty, there must be uncompromising denial of Slavery. Each, in self-defence, must stifle the other. Therefore between the two is constant hostility and undying hate. This eternal warfare is not peculiar to our country. It belongs to the nature of universal man. If it fails to show itself anywhere, it is because Slavery has won its most detestable triumph, and blotted out the Heaven-born sentiment of Freedom. Circumstances among us, going back to our earliest history, have given unprecedented activity to these two incompatible principles, and have at last brought them into bloody battle, face to face. But it is only part of the universal conflict which must endure so long as a single slave shall wear a chain. Slavery itself is *a state of war*, ready to burst forth in blood, whenever the slave reclaims that liberty which is his right, or whenever mankind refuses to sanction its inhuman pretensions.

Go back to the earliest days of Colonial history, and you will find the conflict already preparing. It was in 1620 that twenty slaves were landed at Jamestown, in Virginia, — the first that ever pressed the

soil of our country. In that same year the Pilgrims landed at Plymouth. Those two cargoes contained the hostile germs which have ripened in our time. They fitly symbolize our gigantic strife. On one side is the slave-ship, and on the other is the Mayflower. Early events derive importance as we learn to recognize their undoubted consequences, and these two ships will be regarded with additional interest when it is seen that in them were the beginnings of the present war.

Perhaps, in all the romantic legends of the sea, there is nothing more striking than the contrast of these two vessels. Each had ventured upon an untried and perilous ocean to find an unknown and distant coast. In this they were alike; but in all else how unlike! One was freighted with human beings forcibly torn from their own country, and hurried away in chains to be sold as slaves: the other was filled with good men, who had voluntarily turned their backs upon their own country, to seek other homes, where at least they might be free. One was heavy with curses and with sorrow: the other was lifted with anthem and with prayer. And thus, at the same time, beneath the same sun, over the same waves, each found its solitary way. By no effort of imagination do we see on one Slavery and on the other Liberty, traversing the ocean to continue here, on this broad continent, their perpetual, immitigable war.

I am not alone in homage to the Mayflower. Others have delighted to picture her, and none with more of that consummate art which makes us see the petty craft transfigured by the divine cargo than an illustrious contemporary.

"Hail to thee, poor little ship Mayflower, of Delft-Haven! poor, common-looking ship, hired by common charter-party for coined dollars; calked with mere oakum and tar; provisioned with vulgarest biscuit and bacon: yet what ship Argo, or miraculous epic ship built by the Sea-Gods, was other than a foolish bumbarge in comparison? Golden fleeces, or the like, these sailed for, with or without effect: thou, little Mayflower, hadst in thee a veritable Promethean spark, the life-spark of the largest nation on our earth, — so we may already name the Transatlantic Saxon Nation."[1]

There is no record of what passed on board the slave-ship, before the landing of the slaves. The wail of Slavery, the clank of chains, and the voice of the master counting his cargo, there must have been. But the cabin of the Mayflower witnessed another scene, of which there is authentic record, as the whole company, by solemn compact, deliberately constituted themselves a body politic, and set the grand example of a Christian Commonwealth,[2] — thus indicating the character which they had claimed for themselves, as "knit together as a body in a most strict and sacred bond and covenant of the Lord, of the violation whereof we make great conscience, and by virtue whereof we do hold ourselves straitly tied to all care of each other's good, and of the whole by every one, and so mutually."[3] And so these two voyages closed; but the two cargoes have endured, surviving successive generations.

[1] Carlyle, Chartism, Ch. VIII.: New Eras, Fifth Excerpt from "History of the Teuton Kindred," by Herr Professor Sauerteig.

[2] Bradford's History of Plymouth Plantation: Coll. Mass. Hist. Soc., 4th Ser., Vol. III. pp. 89, 90.

[3] Letter of John Robinson and William Brewster to Sir Edwin Sandys, Leyden, December 15, 1617; Ibid., pp. 32, 33.

The early social life of the two warring sections attests the prevailing influence. Virginia continued to be supplied with slaves, so that Slavery became part of herself. On the other hand, New England always set her face against Slavery. To her great honor, in an age when Slavery was less condemned than now, the Legislature of Massachusetts censured a ship-master who had "fraudulently and injuriously taken and brought a negro from Guinea," and by solemn vote resolved that the negro should be "sent back without delay";[1] and not long after enacted the law of Exodus, "If any man stealeth a man or man-kind, he shall surely be put to death."[2] Thus at that early day stood Virginia and New England: for such, at that time, was the designation of the two provinces which divided British America by a line of demarcation very nearly coincident with the recent slave-line of our Republic.

The contrast appears equally in the opposite character of their respective settlers. Like seeks like, and the Pilgrims of the Mayflower were followed by others of similar virtues, whose first labors on landing were to build churches and schools. Many of them had the best education of England; some were men of substance, and there was no poverty among them that could cause a blush; while all were most exact and exemplary in conduct. They were a branch from that grand Puritan stock, to which, according to the reluctant confession of Hume, "the English owe the whole freedom of their Constitution."[3] We are told by Burke

[1] Records of the Governor and Company of the Massachusetts Bay, Vol. II. p. 136, October 1, 1645.

[2] Capital Laws, 1649: General Laws and Liberties of the Massachusetts Colony, revised and reprinted by order of the General Court, 1672, p. 15.

[3] History of England (London, 1786), Vol. V. p. 183, Ch. XL.

that there is a sacred veil to be drawn over the beginnings of all governments, and that, where this is not happily supplied by time, it must be found in a discreet silence. But no veil is needed for the Puritan settlers of New England. It is very different with the early settlers of Virginia, recruited from the castaways and shirks of Old England, and mostly needy men, of desperate fortunes and dissolute lives, who cared nothing for churches or schools. Such naturally became slave-lords. I should not lift the veil which charity would kindly draw, if a just knowledge of their character had not become important in illustrating the origin of our troubles.

It is a common boast of these slave-lords that they constitute a modern "chivalry," derived from the "Cavaliers" of England, and reinforced by the "ennobling" influences of African Slavery.[1] This boast has been so often repeated, that it has obtained a certain acceptance among those not familiar with our early history, and even well-informed persons allow themselves to say that the conflict in which we are now engaged is a continuance of the old war between Cavalier and Roundhead. So far as it is intended to say that the war is part of the ever-recurring conflict between Slavery and Liberty, there is no objection to this illustration. But if it be intended that the Rebels are cavaliers, or descendants of cavaliers, there is just ground of objection. I know not if the armies of the Union, now fighting the world's greatest battle for Human Rights, may not be called "Roundheads"; but I am sure that Rebels now

[1] "We are the gentlemen of this country," said Mr. Toombs in 1860. He had already threatened to call the roll of his slaves on Bunker Hill.

fighting for Slavery cannot be called "Cavaliers" in any sense. They are not so in character, as their barbarism attests; and they are as little so historically.

The whole pretension is a preposterous absurdity, by which the country has been too much deceived. It is not creditable to the general intelligence that such a folly should play such a part. Unquestionably there were settlers in Virginia, as there were also in New England, connected with aristocratic families. But in each colony they were too few to modify essentially the prevailing population, which took its character from the mass rather than from any individual. The origin of Virginia is so well authenticated as to leave little doubt with regard to its population, unless you reject all the concurrent testimony of contemporaries and all the concurrent admissions of historians. There is nothing in our early history with regard to which authorities are so various and so clear. From their very abundance, it is difficult to choose.

The original "Cavaliers" were English; but it is an historical fact that the Rebel colonies were not settled exclusively from England. The blood of Scotch, Irish, Dutch, Germans, Swiss, French, and Jews commingled there, all of which is amply attested. Huguenots of France, cruelly banished by the revocation of the Edict of Nantes, found a home in both the Carolinas. William Gilmore Simms, the novelist of South Carolina, in a history of his native State, after mentioning the arrival of the Huguenots, says: "Emigrants followed, though slowly, from Switzerland, Germany, and Holland; and the Santee, the Congaree, the Wateree, and Edisto now listened to the strange voices of several nations, who in the Old World had scarcely known each other, ex-

cept as foes."[1] From Hewit's "Historical Account of South Carolina," published in 1779, we have details of settlement by Dutch, French, Swiss, Scotch, and Germans, followed by the remark, "But of all other countries none has furnished the province with so many inhabitants as Ireland."[2] A similar story is told of North Carolina.[3] Here is nothing of the boasted "chivalry"; and if we search the testimony with regard to the character and condition of these early settlers, the whole "cavalier" pretension becomes still more improbable, if not impossible.[4]

Even before English colonization had begun, and before Sir Walter Raleigh or Captain John Smith had landed on our coasts, the "temperate and fertile parts of America" had been proposed as a substitute for the prison and gibbet. I quote from a Dedicatory Epistle of Richard Hakluyt "to the right worshipful and most virtuous Gentleman, Master Philip Sydney, Esquire."

"Yea, if we would behold with the eye of pity how all our prisons are pestered and filled with able men to serve their country, which for small robberies are daily hanged up in great numbers, even twenty at a clap out of one jail (as was seen at the last assizes at Rochester), we would hasten and further, every man to his power, the deducting of some colonies of our superfluous people into those temperate and fertile parts of America, which, being within six

[1] History of South Carolina, p. 60.

[2] Historical Account, Vol. II. p. 272.

[3] Martin, History of North Carolina, Vol. I. p. 218, *et passim*.

[4] I should not have deemed it necessary to make this inquiry, had I seen the thorough pamphlet of Mr. William H. Whitmore, entitled "The Cavalier Dismounted: an Essay on the Origin of the Founders of the Thirteen Colonies," which appeared contemporaneously with this speech.

weeks' sailing of England, are yet unpossessed by any Christians, and seem to offer themselves unto us, stretching nearer unto her Majesty's dominions than to any other part of Europe. We read that the bees, when they grow to be too many in their own hives at home, are wont to be led out by their captains to swarm abroad, and seek themselves a new dwelling-place."[1]

This recommendation, associated with the names of Hakluyt and Sydney, was followed, — with what success you shall know.

I begin with the early patron of Virginia, Lord Delaware, who, after visiting the colony, described the people there, in a letter dated at Jamestown, July 7, 1610, as "men of distempered bodies and infected minds, whom no examples daily before their eyes, either of goodness or punishment, can deter from their habitual impieties or terrify from a shameful death."[2] Little of chivalry here!

The colony, which began with bad men, was increased by worse. In November, 1619, King James wrote to the Virginia Company, "commanding them forthwith to send away to Virginia an hundred dissolute persons, which Sir Edward Zouch, the Knight Marshal, would deliver to them."[3] Thus by royal command was this colony made a Botany Bay.

The Company, not content with the "hundred dissolute persons" supplied by the king's order, entreated for

[1] Divers Voyages touching the Discovery of America, and the Islands adjacent unto the same, made first of all by our Englishmen, and afterward by the Frenchmen and Britons, etc. [By Richard Hakluyt.] Imprinted at London for Thomas Woodcock, 1582.

[2] Strachey's History of Travel into Virginia Britannia: Introduction, p. xxxii.

[3] Stith's History of Virginia, p. 167.

more, until Captain John Smith, the hero of Virginia, was moved to express his disgust. He testified to the evil, when he wrote in 1622: "Since I came from thence, the Honorable Company have been humble suitors to his Majesty *to get vagabond and condemned men* to go thither; nay, so much scorned was the name of Virginia, *some did choose to be hanged, ere they would go thither, and were.*" [1] This was bad enough.

But the Virginia Company was insensible to the shame of such a settlement. Its agents and orators vindicated the utility of the colony. In a work entitled "*Nova Britannia,* offering most Excellent Fruits by Planting in Virginia," published in London in 1609, and dedicated to "one of his Majesty's Council for Virginia," it was openly argued, that, unless "swarms of idle persons in lewd and naughty practices" were sent abroad, "we must provide shortly *more prisons and corrections* for their bad conditions"; and that it was "most profitable for our state to rid our multitudes of such as lie at home, pestering the land with pestilence and penury, and infecting one another with vice and villany, worse than the plague itself." [2] Dr. Donne, Dean of St. Paul's, poet also, in a sermon "preached to the Honorable Company of the Virginian Plantation, November 30th, 1622," thus sets forth the merits of the colony: "The plantation shall redeem many a wretch from the jaws of death, from the hands of the executioner. . . . . *It shall sweep your streets and wash your doors from idle persons* and the children of idle persons, and employ them." [3] Such were the puffs by which recruits were gained for Virginia.

[1] New England's Trials, p. 16: Force's Tracts, Vol. II.
[2] Nova Britannia, p. 19: Ibid., Vol. I.
[3] Sermon CLVI.: Works (London, 1839), Vol. VI. p. 232.

History records the unquestionable result, and here authorities multiply. Sir Josiah Child, in his "Discourse of Trade," published in 1694, says: "*Virginia* and Barbadoes were *first peopled* by a sort of loose, vagrant people, vicious, and destitute of means to live at home, ... such as, had there been no English foreign plantation in the world, could probably never have lived at home to do service to their country, but must have come to be hanged or starved, or died untimely of some of those miserable diseases that proceed from want and vice, or else have sold themselves for soldiers, to be knocked on the head or starved in the quarrels of our neighbors."[1] Dr. Douglass, in his "British Settlements in North America," printed in 1749, is very positive, saying, "Virginia and Maryland have been for many years, and continue to be, a sink for transported criminals."[2] "Our plantations in America, *New England excepted,* have been generally settled, (1.) by malcontents with the Administrations from time to time; (2.) by fraudulent debtors, as a refuge from their creditors; (3.) and by convicts or criminals, who chose transportation rather than death."[3] Grahame, the Scotch historian, who has written so conscientiously of our country, speaking of the first settlers, says of Virginia: "A great proportion of the new emigrants consisted of profligate and licentious youths, sent from England by their friends, with the hope of changing their destinies, or for the purpose of screening them from the justice or contempt of their country, ... with others like these,

[1] A New Discourse of Trade (5th edit.), p. 138, Ch. X., *Concerning Plantations.*

[2] Summary, Historical and Political, of the First Planting, etc., of the British Settlements in North America, (Boston, 1749,) Vol. I. Part 1, p. 115.

[3] Ibid., Vol. I., Part 2, p. 490, note.

more likely to corrupt and prey upon an infant commonwealth than to improve or sustain it."[1] The historian of Virginia, William Stith, whose work was published at Williamsburg in the last century, is not less explicit. "I cannot but remark," he says, "how early that custom arose of transporting loose and dissolute persons to Virginia, as a place of punishment and disgrace, which, although originally designed for the advancement and increase of the colony, yet has certainly proved a great prejudice and hindrance to its growth; for it hath laid one of the finest countries in British America under the unjust scandal of being *a mere hell upon earth,* another Siberia, and only fit for the reception of malefactors and the vilest of the people; so that few people, at least few large bodies of people, have been induced willingly to transport themselves to such a place, and our younger sisters, the Northern Colonies, have accordingly profited thereby."[2] But this is not all. Another historian of Virginia, of our own day, whose work was published at Richmond in 1848, while showing that pride in his State which would change every settler into a "cavalier," is compelled to make the following most rueful confession: "Gentlemen, reduced to poverty by gaming and extravagance, too proud to beg, too lazy to dig; broken tradesmen, with some stigma of fraud yet clinging to their names; footmen, who had expended in the mother country the last shred of honest reputation they had ever held; rakes, consumed with disease and shattered in the service of impurity; libertines, whose race of sin was yet to run; and unruly

[1] History of the United States (Boston, 1845), Vol. I. pp. 53, 54.

[2] History of the First Discovery and Settlement of Virginia, p. 168. See, also, p. 103.

sparks, packed off by their friends to escape worse destinies at home: these were the men who came to aid in founding a nation, and to transmit to posterity their own immaculate impress."[1] And this same historian confesses that social life in Virginia, beginning in such baseness, after more than a century, had developed "an aristocracy neither of talent nor learning nor moral worth, but of landed and slave interest."[2] So much for the testimony of history, even when written and printed in Virginia. In harmony with this testimony was the honest exclamation of a Virginian in 1751: "In what can Britain show a more sovereign contempt for us than by emptying their jails into our settlements, unless they would likewise empty their jakes on our tables?"[3]

I know not the number of desperate persons shipped to Virginia; but there were enough to leave an indelible impress on the colony, and to give it a name in the literature of the time. It was this colony which suggested to Bacon the most pregnant words of one of his Essays, which furnished to De Foe several striking passages in one of his romances, which furnished a confirmatory article in the Dictionary of Postlethwayt, and which provoked Massinger to a dialogue in one of his dramas. Glance for a moment at these illustrations.

It is in the Essay on "Plantations" that Bacon thus brands the early settlement of Virginia: "It is a shameful and unblessed thing to take *the scum of people and wicked condemned men* to be the people with whom you

[1] Howison, History of Virginia, Vol. I. p. 169.
[2] Ibid., Vol. II. p. 201.
[3] London Magazine, July, 1751, Vol. XX. p. 293.

plant; and not only so, but it *spoileth the plantation,* for they will ever live like rogues." Surely there is nothing in this out of which to construct a "cavalier."

In the narrative of Moll Flanders, the author of "Robinson Crusoe," who gives to all his sketches such life-like character that they seem to be sun-pictures, exhibits this same colony. Here is a glimpse. "The greatest part of the inhabitants of that colony came thither in very indifferent circumstances from England. Generally speaking, they were of two sorts: either, first, such as were brought over by masters of ships to be sold as servants; or, second, such as are transported, after having been found guilty of crimes punishable with death. When they come here, we make no difference; the planters buy them, and they work together in the field till their time is out. . . . . Hence many a Newgate bird becomes a great man; and we have several justices of the peace, officers of the trained bands, and magistrates of the towns they live in, that have been burnt in the hand. . . . . Some of the best men in the country are burnt in the hand, and they are not ashamed to own it. There's Major ———, he was an eminent pickpocket; there's Justice Ba——r, was a shoplifter; and both of them were burnt in the hand; and I could name you several such as they are."[1] Nothing is said here of "cavaliers."

The author of the "Dictionary of Commerce," quoted often in courts, confirms the testimony of Moll Flanders, when he says: "Even your transported felons, sent to Virginia instead of Tyburn, thousands of them, if we are not misinformed, have, by turning their hands

[1] Fortunes and Misfortunes of the Famous Moll Flanders: Novels and Miscellaneous Works of Daniel De Foe (Oxford, 1840), Vol. IV. pp. 87, 88.

to industry and improvement, and, which is best of all, to honesty, become rich, substantial planters and merchants, settled large families, and been famous in the country; nay, we have seen many of them made magistrates, officers of militia, captains of good ships, and masters of good estates."[1] Here, again, is nothing said of "cavaliers."

Another writer, who travelled through the colonies in 1742–3, says, in the same vein, that "several of the best planters, or their ancestors, have in the two colonies [Virginia and Maryland] been originally of the convict class, and therefore are much to be praised and esteemed for forsaking their old courses."[2]

While all this cumulative evidence shows that the settlers did better in Virginia than in England, it fails to support the Rebel pretension of to-day.

I have referred to Massinger. Here is a curious bit from a grave comedy of that poet dramatist.

> "*Luke.* It is but to Virginia.
> "*Lady Frugal.* How? Virginia?
> High Heaven forbid! Remember, Sir, I beseech you,
> What creatures are shipped thither.
> "*Anne.* Condemned wretches,
> Forfeited to the law.
> "*Mary.* For the abomination of their life,
> Spewed out of their own country."[3]

Thus from every quarter the testimony accumulates. And yet, in face of these impartial and unimpeachable authorities, we are constantly told that Virginia was settled by "cavaliers."

[1] Postlethwayt, Universal Dictionary of Trade and Commerce, (London, 1757), Vol. II. p. 319, Art. NAVAL STORES.

[2] Itinerant Observations in America: London Magazine, July, 1746, Vol. XV. p. 326.

[3] The City Madam, Act V. Sc. 1.

The territory now occupied by South Carolina originally constituted part of Virginia. Out of Virginia it was carved into a separate colony. Although differing in some respects, the populations seem to have been kindred in character. Ramsay, the historian of the State, in a work published at Charleston in 1809, says that "the emigrants were a medley of different nations and principles," and that among them were persons "who took refuge from the frowns of Fortune and the rigor of creditors," "young men reduced to misery by folly and excess," and "restless spirits, fond of roving." To these were added Huguenots from France.[1] But Grahame tells us that "not a trace of the existence of an order of clergymen is to be found in the laws of Carolina during the first twenty years of its history."[2] And another historian says that "the inhabitants, far from living in friendship and harmony among themselves, have been seditious and ungovernable."[3] Such a people were naturally insensible to moral distinctions, so that, according to Hewit, pirates "were treated with great civility and friendship," and "by bribery and corruption they often found favor with the provincial juries, and by this means escaped the hands of justice." All of which is declared by the historian to be "evidences of the licentious spirit which prevailed in the colony."[4] Grahame uses still stronger language, when he says, "The governor, the proprietary deputies, and the principal inhabitants degraded themselves to a level with the vilest of mankind by abetting the crimes of

[1] History of South Carolina, pp. 2 – 5.

[2] History of the United States, Vol. II. p. 82.

[3] Hewit, Historical Account of the Rise and Progress of South Carolina and Georgia, Vol. I. p. 104.

[4] Ibid., pp. 92, 115.

pirates, and willingly purchasing their nefarious acquisitions."[1] Such is the testimony with regard to South Carolina. To call such a people "cavaliers" is an abuse of terms.

I hope I do not take too much time in exposing a vainglorious pretension, which has helped to give the Rebellion a character of respectability it does not deserve. I dismiss it to general contempt, as one of the lies by which Slavery, the greatest lie of all, is recommended to the weak who can be deceived by names. But you will not fail to remark how naturally Slavery flourished among such a congenial people. Convicts and wretches who had set at nought all rights of property and all decency were the very people to set up the revolting pretension "of property in man." If these were called "cavaliers," and if their conduct was called "chivalry," it was only under the ancient rule of opposites, because they were in no respect "cavaliers," nor had they even the semblance of "chivalry."

Not in Slavery or its battles is "chivalry" found, not in vain pretension, not in any indignity to the poor and lowly. From one who has studied it in its deeds, we learn that it is "that general spirit or state of mind which disposes men to heroic and generous actions, and keeps them conversant with all that is beautiful and sublime in the intellectual and moral world."[2] How little of this in our Rebel slave-masters!

I come back to the postulate with which I began, that the present war is simply a conflict between Slav-

[1] History of the United States, Vol. II. p. 120.
[2] Kenelm Henry Digby, Godefridus, p. 86.

ery and Liberty. This is a plain statement, which will defy contradiction. To my mind it is more satisfactory than that other statement, often made, that it is a conflict between Aristocracy and Democracy. This in a certain sense is true; but from its generality it is less effective than the more precise and restricted statement. It does not disclose the whole truth; for it does not exhibit the unique and exceptional character of the pretension which we combat. For centuries there has been a conflict between Aristocracy and Democracy, or, in other words, the few on one side have been perpetually striving to rule and oppress the many. But now, for the first time in the world's annals, a people professing civilization has commenced war to uphold the intolerable pretension of *compulsory labor without wages*, and that most disgusting coïncident, the whipping of women and the selling of children. Call these pretenders aristocrats or oligarchs, if you will; but be assured that their aristocracy or oligarchy is the least respectable ever attempted, and is so entirely modern that it is antedated by the Durham bull Hubbuck, short-horn progenitor of the oligarchy of cattle, and by the stallion Godolphin, Arabian progenitor of the oligarchy of horses, each of which may be traced to the middle of the last century. And also know, that, if you would find a prototype in brutality, you must turn your back upon civilized history, and repair to those distant islands which witnessed an oligarchy of cannibals, or go to barbarous Africa, which has been kept in barbarism by an oligarchy of men-stealers.

Thus it stands. The conflict is directly between Slavery and Liberty. But because Slavery aims at the life of the Republic, the issue involves our national

existence; and because our national death would be the despair of Liberty everywhere, it involves this great cause throughout the world. And so I would not for one moment lose sight of the special enemy; for our energies can be properly directed only when we are able to confront him. "Give me to see!" said the old Greek; and this must be our exclamation now.

Slavery, from the beginning, has been a disturber, as it is now a red-handed traitor. I do not travel back before the Revolution, but, starting from that great event, I show you Slavery always offensive, and forever thrusting itself in the path of national peace and honor. The Declaration of Independence, as originally prepared by Jefferson, contained a vigorous passage denouncing King George for patronage of the slave-trade. The slave-masters insisted upon striking it out, and it was struck out; and here was their first victory. At the adoption of the National Constitution, they insisted upon recognition of the slave-trade as a condition of Union; and here was another victory. In the earliest Congress under the Constitution they commenced the menace of disunion, and this menace was continued at every turn of public affairs, especially at every proposition or even petition touching Slavery, until it triumphed signally in that atrocious Fugitive Slave Bill which made all the Free States a hunting-ground for slaves. Throughout these contests Slavery was vulgar, brutal, savage, while its braggart orators and chaplains heralded its claims. Hogarth, in his famous picture of Bruin, painted Slavery, when he portrayed an immense grizzly bear hugging, as if he loved it, an enormous gnarled bludgeon, with a brand of infamy labelled on

every knot, such as *Lie Twelve, Lie Fifteen,* and about his throat a clerical band, torn, crumpled, and awry. In the States where it flourished speech and press were both despoiled of freedom, and the whole country seemed to be fast sinking under its degrading tyranny. Everything in science, or history, or church, or state, was bent to its support. There was a new political economy, teaching the superiority of slave labor, — a new ethnology, excluding the slave from the family of man, — a new heraldry, admitting the slavemonger to the list of nobles, — a new morality, vindicating the rightfulness of Slavery, — a new religion, recognizing Slavery as a missionary enterprise, — a new theodicy, placing Slavery under the sanctions of Divine benevolence, — and a new Constitution, installing Slavery in the very citadel of Liberty. By such strange inventions the giant felony fortified itself. At last it struck the pioneers of Liberty in Kansas. There was its first battle. The next was when it took up arms against the National Government, and rallied all its forces in bloody rebellion. Thus is this Rebellion, by unquestionable pedigree, derived from Slavery, and the parent lives in the offspring.

Therefore, if you are in earnest against the Rebellion, you must be in earnest, also, against Slavery; for the two are synonymous, or convertible terms. The Rebellion is nothing but belligerent Slavery. It is Slavery armed and equipped in deadly grapple with Liberty.

Only when we see the Rebellion *as it is,* in its true light, face to face, do we see our whole duty. Then must the patriot, whatever his personal prejudices or party associations, insist, at all hazards, that Slavery shall not be suffered to escape from that righteous judgment which

is the doom of the Rebellion. No false tenderness, no casuistry of politics, must intrude to save it anywhere; for you cannot save Slavery anywhere without just to that extent saving the Rebellion. Show me anywhere a sympathiser with Slavery, and I show you a sympathiser with the Rebellion.

Our duty is clear. In the sacred service of patriotism nothing can be allowed to stand in the way. Fortress, camp, citadel, each and all, must be overcome; but the animating soul of every fortress, camp, or citadel throughout the Rebellion is Slavery. Surely, when the country is in danger, there can be no hesitation. And as the greater contains the less, so this greatest charity of country embraces for the time all other charities.

In striking at Slavery, there is another advantage not to be forgotten. Such a blow is in strict obedience to the laws of Nature; and we are reminded by the great master of thought, Lord Bacon, that only through such obedience can victory be won, — *vincit parendo.* It is in conformity, also, with all the attributes of God; so that His Almighty arm will give strength to the blow. Thus do we bring our efforts in harmony with the sublime laws, physical and moral, which govern the universe, while every good influence, every breath of Heaven, and every prayer of man, is on our side. We also bring ourselves in harmony with our own Declaration of Independence, so that all its early promises become a living letter, and our country is at last saved from that practical inconsistency which has been a heavy burden in her history.

To do all this seems so natural and so entirely according to the dictates of patriotism, that we may well be astonished that it should meet opposition. But there is

a wide-spread political party, which, true to its history, now comes forward to save belligerent Slavery, — even at this last moment, when it is about to be trampled out forever. Not to save the country, but to save belligerent Slavery, is the object of the misnamed Democracy. Asserting the war, in which so much has been done, to be a failure, — forgetting the vast spaces it has already reclaimed, the rivers it has opened, the ports it has secured, and the people it has redeemed, — handing over to contempt officers and men, living and dead, who have waged its innumerable battles, — this political party openly offers surrender to the Rebellion. I do not use too strong language. It is actual surrender and capitulation that are offered, in one of two forms: (1.) by acknowledging the Rebel States, so that they shall be treated as independent; or (2.) by acknowledging Slavery, so that it shall be restored to its old supremacy over the National Government, with additional guaranties. The different schemes of opposition are all contained in one or the other of these two propositions.

Examining these two propositions, we find them equally flagitious and impracticable. Both allow the country to be sacrificed for the sake of Slavery: one by breaking the Union in pieces, that a new Slave Power may be created; and the other by continuing the Union, so that the old Slave Power may enjoy its sway and masterdom. Both pivot on Slavery. One acknowledges the Slave Power *out of the Union;* the other acknowledges the Slave Power *in the Union.*

Glance, if you please, at these two different forms of surrender.

I.

AND, *first, of surrender by acknowledging the Rebel States,* so that they shall be independent. How futile to think that there can be any consent to the establishment of a Slave Power taken from our Republic! Such a surrender would begin in shame; but it would also begin, continue, and end in troubles and sorrows which no imagination can picture.

1. I do not dwell on the shame that would cover our Republic, but I ask, on the threshold, how you would feel in abandoning to the tender mercies of the Rebellion all those who, from sentiment or conviction or condition, now look to the National Government as deliverer. This topic, it seems to me, has not been sufficiently impressed upon the country. Would that I could make it sink deep into your souls! There are the Unionists, shut up within the confines of the Rebellion, and unable to help themselves. They can do nothing, not even cry out, until the military power of the Rebellion is crushed. Let this be done, let the Rebel grip be unloosed, and you will hear their voices, as joyously and reverently they hail the national flag. And there, also, are the slaves, to whom the Rebellion is an immense, deep-moated, thick-walled, heavy-bolted Bastile, where a whole race is blinded, manacled, and outraged. But these, again, are powerless, so long as Rebel sentinels keep watch and ward over them. To these two classes in the Rebel States we have owed, from the beginning, a solemn duty, which can be performed only by perseverance to the end. The patriot Unionists, who have kept

their loyalty in solitude and privation, like the early Christians concealed in catacombs, and also the slaves, who have been compelled to serve their cruel taskmasters, must not be sacrificed.

Perhaps there is no character in which the National Government may exult more truly than that of Deliverer. Rarely in history has such a duty, with its attendant glory, been so clearly imposed. The piety of early ages found vent in the Crusades, those wonderful enterprises of valor and travel, which exercised a transforming influence over modern civilization. But our war is not less important. It is a crusade, not to deliver the tomb, but to deliver the living temples of the Lord, and it is destined to exercise a transforming influence beyond any crusade in history.

2. If you agree to abandon patriots and slaves in the Rebel States, you will only begin your infinite difficulties. How determine the boundary-line to cleave this continent in twain? Where shall the god Terminus plant his stone? What States shall be left at the North in the light of Liberty? What States shall be consigned to the gloom of Slavery? Surely no swiftness of surrender can make you abandon Maryland, now redeemed by votes of citizen soldiers, — nor West Virginia, received as a Free State, — nor Missouri, which has been made the dark and bloody ground. And how about Kentucky, Tennessee, and Louisiana? There also is the Mississippi, once more free from source to sea. Surely this mighty river will not be compelled again to wear chains.

These inquiries simply open the difficulties in this endeavor. If there were any natural boundary, in it-

self a barrier and an altar, or if during long generations any Chinese wall had been built for three thousand miles across the continent, then perhaps there might be a dividing line. But Nature and civilization, by solemn decree, have fixed it otherwise, marking this broad land, from Northern lake to Southern gulf, for one Country, with one Liberty, one Constitution, and one Destiny.

3. If the boundary-line is settled, then will arise the many-headed question of terms and conditions. On what terms and conditions can peace be stipulated? Exulting Rebels, whose new empire is founded on the corner-stone of Slavery, will naturally exact promises for the rendition of fugitive slaves. Are you, who have just emancipated yourselves from this obligation, ready to renew it, and to commit again an inexpiable crime? If you do not, how can you expect peace? Then it will remain to determine the commercial relations between the two separate governments, with rights of transit and travel. If you think that Rebels, flushed with success, and scorning their defeated opponents, will come to any practical terms, any terms which will not leave our commerce and all engaged in it victims of outrage, you place trust in their moderation which circumstances thus far do not justify. The whole idea is little better than an excursion to the moon in a car drawn by geese, as described by the Spanish poet.

Long before the war, and especially in the discussions which preceded it, these Rebels were fiery and most unscrupulous. War has not made them less so. The moral sense which they wanted when it began has not been enkindled since. With such a people there is

no chance of terms and conditions, except according to their lawless will. The first surrender on our part will be the signal to a long line of surrenders, each a catastrophe. Nothing too unreasonable or grinding. If our own national debt is not repudiated, theirs at least must be assumed.

4. Suppose the shameful sacrifice consummated, the impossible boundaries adjusted, and the illusive terms and conditions stipulated, do you imagine that you have obtained peace? Alas, no! Nothing of the sort. You may call it peace; but it will be war in disguise, ready to break forth in perpetual, chronic, bloody battle. Such an extended inland border, over which Slavery and Liberty scowl at each other, will be a constant temptation, not only to enterprises of smuggling, but to hostile incursions, so that our country will be obliged to sleep on its arms, ready to spring forward in self-defence. Every frontier town will be a St. Albans.[1] Military preparations, absorbing the resources of the people, will become permanent instead of temporary, and the arts of peace will yield to the arts of war. The national character will be changed, and this hospitable continent, no longer the prosperous home of the poor and friendless, thronging from the Old World, will become a repulsive scene of confusion and strife, while "each new day a gash is added to her wounds."

Have we not war enough now? Are you so enamored of funerals, where the order of Nature is reversed, and parents follow their children to the grave, that you are willing to keep a constant carnival of Death? Oh, no!

[1] Only a short time before this speech, a Rebel incursion, organized in Canada, had reached this place.

You all desire peace. But there is only one way to secure it. So conduct the present war, that, when once ended, there shall be no remaining element of discord, no surviving principle of battle, out of which future war can spring. Above all, belligerent Slavery must not rear its crest as an independent power.

5. There is another consequence not to be omitted. War would not be confined to the two governments representing respectively the two hostile principles, Slavery and Liberty. It would rage with internecine fury among ourselves. Admit that States may fly out of the Union, and where will you stop? Other States must follow, in groups or singly, until our mighty galaxy is broken into separate stars or dissolved into the nebular compost of a people without form or name. Where then is country? Where then those powerful States, the pride of civilization and the hope of mankind? Handed over to ungovernable frenzy, without check or control, until anarchy and chaos are supreme, — as with the horses of the murdered Duncan, which, at the assassination of their master,

> "Beauteous and swift, the minions of their race,
> Turned wild in nature, broke their stalls, flung out,
> Contending 'gainst obedience, as they would make
> War with mankind. 'T is said they eat each other."

The picture is terrible; but it hardly exaggerates the fearful disorder. Already European enemies, looking to their desires for conclusions, predict a general discord. Sometimes it is said that there are to be four or five new nations, — that the Northwest is to be a nation by itself, the Middle States another, the Pacific States another, and our New England States still another, so that

Rebel Slavery will be the predominant power on this continent. But it is useless to speculate on the number of these fractional governments. If disunion is allowed to begin, it cannot be stopped. Misrule and confusion will be everywhere. Our fathers saw this at the adoption of the National Constitution, when, in a rude sketch of the time, they pictured the Thirteen States as so many staves bound by the hoops into a barrel. Let a single stave be taken out, and the whole barrel falls to pieces. It is easy to see how this must occur with States. The triumph of the Rebellion will be not only the triumph of belligerent Slavery, but also the triumph of State Rights, to this extent,— first, that any State, in the exercise of its own lawless will, may abandon its place in the Union, and, secondly, that the constitutional verdict of the majority, as in the election of Abraham Lincoln, is not binding. With these two rules of conduct, in conformity with which the Rebellion was organized, there can be no limit to disunion. Therefore, when you consent to the independence of the Rebel States, you disband the whole company of States, and blot our country from the map of the world.

II.

I HAVE said enough of surrender by recognition of the Slave States, or, in other words, of the Slave Power, *out of the Union.* It remains now that I ask attention to that other form of surrender which proposes *recognition of the Slave Power in the Union.* Each is surrender. The first, as we have already seen, abandons

part of the Union to the Slave Power; the other subjects the whole Union to the Slave Power.

It is proposed that the Rebel States shall be tempted to lay down their arms by recognition of Slavery in the Union, with new guaranties and assurances of protection. *Slavery cannot exist, where it does not govern.* Therefore must we beg Rebel slave-masters back to govern us. Such, in plain terms, is the surrender proposed. For one, I will never consent to any such intolerable rule.

The whole proposition is not less pernicious than that other form of surrender; nor is it less shameful. It is insulting to reason, and offensive to good morals.

1. I say nothing of the ignominy it would bring upon the Republic, but call attention at once to its character as a Compromise. In the dreary annals of Slavery it is by compromise that slave-masters have succeeded in warding off the blows of Liberty. It was a compromise by which that early condemnation of the slave-trade was excluded from the Declaration of Independence; it was a compromise which surrounded the slave-trade with protection in the National Constitution; it was a compromise which secured the admission of Missouri as a Slave State; and, without stopping to complete the list, it is enough to say that it was a compromise by which the atrocious Fugitive Slave Bill was fastened upon the country, and the Slave Power was installed in the National Government. And now, after the overthrow of the Slave Power at the ballot-box, followed by years of cruel war, another compromise, greatest of all, is proposed, by which belligerent Slavery, dripping with the blood of murdered fellow-citizens,

shall be welcomed to more than its ancient supremacy. Where is national virtue, that such a surrender can be entertained? Where is national honor, that the criminal pettifoggers are not indignantly rebuked?

The proposition is specious in form as baleful in substance. It is said that Rebel slave-masters should have their "rights under the Constitution." To this plausible language is added that other phrase, "the Constitution as it is." All this means Slavery, and nothing else. For Slavery men resort to this odious duplicity. Thank God, the game is understood.

2. But any compromise recognizing Slavery in the Rebel States is impossible, even if you are disposed to accept it. Slavery, by the very act of rebellion, ceased to exist, legally or constitutionally. It ceased to exist according to principles of public law, and also according to just interpretation of the Constitution; and having once ceased to exist, it cannot be revived.[1]

When I say that it ceased to exist *legally*, I found myself on an unquestionable principle of public law, that Slavery is a peculiar local institution, without origin in natural right, and deriving support exclusively from the local government; but if this be true, — and it cannot be denied, — then Slavery must have fallen with that local government.

When I say that it ceased to exist *constitutionally*, I found myself on the principle that Slavery is of such a character that it cannot exist within the exclusive jurisdiction of the Constitution, as, for instance, in the National territories, and that therefore it died constitutionally, when, through disappearance of the local

[1] See, *ante*, Vol. VIII. pp. 165, 169, 175.

government, it fell within the exclusive jurisdiction of the Constitution.

The consequences of these two principles are most important. Taken in conjunction with the rule, "Once free, always free," they establish the impossibility of any surrender to belligerent Slavery *in the Union.*

3. If, in the zeal of surrender, you reject solemn principles of public law and Constitution, then let me remind you of the Proclamation of Emancipation, where the President, by virtue of the power vested in him as Commander-in-Chief of the Army and Navy of the United States, ordered that the slaves in the Rebel States "are and henceforward shall be free," and the Executive Government, including the military and naval authorities, are pledged to "recognize and maintain the freedom of said persons." By the terms of this instrument, it is applicable to all slaves in the Rebel States, — not merely to those within the military lines of the United States, but to all. Even if the President were not in simple honesty bound to maintain this Proclamation according to the letter, he has not the power to undo it. The President may make a freeman, but he cannot make a slave. Therefore must he reject all surrender inconsistent with this Act of Emancipation.

It is sometimes said that the Court will set aside the Proclamation. Do not believe it. The Court will do no such thing. It will recognize this act precisely as it recognizes other political and military acts, without presuming to interpose any unconstitutional *veto,* — and it will recognize this act to the full extent, as was intended, according to its letter, so that every slave in the

Rebel States will be free. Even if the Court should hesitate, there can be no hesitation with the President, or with the people, bound in sacred honor to the freedom of every slave in the Rebel States. Therefore against every effort of surrender the Proclamation presents an insuperable barrier.

4. If you are willing to descend deep down to the fathomless infamy of renouncing the Proclamation, then in the name of peace do I protest against any such surrender. So long as Slavery exists in the Union, there can be no peace. The fires which seem to be extinguished will only be covered by treacherous ashes, out of which another conflagration will spring to wrap the country in war. This must never be.

It is because Slavery is not yet understood, that any are willing to tolerate it. See it as it is, and there can be no question. Slavery is guilty of every crime. The slave-master is burglar, for by night he enters forcibly into the house of another; he is highway robber, for he stops another on the road, and compels him to deliver or die; he is pickpocket, for he picks the pocket of his slave; he is sneak, for there is no pettiness of petty larceny he does not employ; he is horse-stealer, for he takes from his slave the horse that is his; he is adulterer, for he takes from the slave the wife that is his; he is receiver of stolen goods on the grandest scale, for the human being stolen from Africa he foolishly calls his own. When I describe the slave-master, it is simply as he describes himself in the code he sanctions. All crime is in Slavery, and so every criminal is reproduced in the slave-master. And yet it is proposed to bestow upon this whole class not

only new license for their crimes, but a new lease of their power. Such surrender would be only the beginning of long-continued, unutterable troubles, breaking forth in bloodshed and sorrow without end.

5. Lastly, this surrender cannot be made without surrender to the Rebellion. Already I have exhibited the identity between Slavery and the Rebellion; and yet it is proposed to recognize Slavery in the Union, when such recognition will be plain recognition of the Rebellion.

The whole thing is impossible, and not to be tolerated. Alas! too much blood has been shed, and too much treasure lavished, for this war to close with any such national stultification. The Rebellion must be crushed, whether in the guise of war or under the *alias* of Slavery. It must be trampled out, so that it can never show itself again, or prolong itself into another generation. Not to do this completely is not to do it at all. Others may act as they please, but I wash my hands of this great responsibility. History will not hold such surrender blameless.

> "An orphan's curse would drag to hell
> A spirit from on high";

but the orphans of this war must heap curses heaven-high upon the man who consents to see its blood and treasure end in nought.

Such are the grounds for the repudiation of all surrender to Slavery *in the Union*. I have also shown that there can be no surrender to Slavery *out of the Union*. In either alternative surrender is impossible; but even if possible, it would be most perilous and degrading.

Thus far I have said nothing of platforms or candidates. I desired to present the issue of principle, so that the patriot could choose without embarrassment from party association. Pardon me now, if for one moment I bring platforms and candidates to the touchstone.

There is the Baltimore platform, with Abraham Lincoln as candidate. No surrender here. In one resolution it is declared that the war must be prosecuted "with the utmost possible vigor to *the complete suppression of the Rebellion.*" In another it is declared, "that, as Slavery was the cause, and now constitutes the strength of this Rebellion, and as it must be always and everywhere hostile to the principles of republican government, *justice and the national safety demand its utter and complete extirpation from the soil of the Republic.*" [1] There is salvation in these words, pronouncing the doom of Slavery in the name of justice and the national safety. The candidate has solemnly accepted them, not only when he accepted his nomination, but yet again, when, in the discharge of official duties, he said briefly, "to whom it may concern," that there could be no terms of peace, except on the condition of "the integrity of the whole Union and the abandonment of Slavery." [2] In this letter of the President, unquestionably the best he ever wrote, it is practically declared, in conformity with the Baltimore platform, that there can be no surrender to Slavery in the Union or out of the Union.

Turn to the Chicago platform and its candidate, and what a contrast! There is surrender in both forms.

[1] McPherson's Political History of the United States during the Great Rebellion, p. 406.

[2] Ibid., p. 301.

The platform surrenders to Slavery *out of the Union*, and, in proposing a "cessation of hostilities," prepares the way for recognition of the Rebel States. The candidate, in a letter accepting the nomination, surrenders to Slavery *in the Union*. The platform plainly looks to disunion. The letter seemingly looks to union; but whether looking to union or not, it plainly surrenders to Slavery.

There is still another surrender in the Chicago platform. While professing formal devotion to the Union, it declines to insist upon "National unity," or "a union on the basis of the Constitution of the United States." No such terms are employed; but we are invited to seek peace "on the basis of the Federal Union of the States": so that, according to this platform, it is not the National Union, that union of the people accepted by Washington and defended by Webster, which we are to have, but a "Federal Union of the States," where State Sovereignty, as accepted by John C. Calhoun and defended by Jefferson Davis, will be supreme; and all this simply for the sake of Slavery.

Look at the Chicago platform or candidate as you will, and you are constantly brought back to Slavery as the animating impulse. Look at the Baltimore platform or candidate, and you are constantly brought back to Liberty as the animating impulse. And thus again Slavery and Liberty stand face to face, — the slave-ship against the Mayflower.

There is another contrast between the two platforms, which ought not to be forgotten. That of Chicago, while saying nothing against the Rebellion, uses ambiguous language, interpreted differently by different persons; while that of Baltimore is so plain and une-

quivocal that it leaves no room for question. This contrast is greater still, when we turn to the two candidates. Perhaps never between two candidates was it presented to the same extent. The Chicago candidate has written a subtle letter, which is interpreted according to the desires of its readers, — some finding peace, and others finding war. And this double-faced proceeding is his bid for the Presidency. I need not remind you that our candidate has never uttered a word of duplicity, and that his speeches and letters can be interpreted only in one way. And these are the two representatives of Slavery and Liberty.

Fellow-citizens, such is the issue of principle, such are the platforms and candidates. And now, I ask frankly, Are you for Slavery, or are you for Liberty? Or, changing the form of the question, Are you for the Rebellion, or are you for your country? For this is the question you must answer by your votes. In your answer, do not forget, I entreat you, its infinite, far-reaching, many-sided importance. This is no ordinary election. It is a battle-field of the war; and victory at the polls will assure victory everywhere. Grant, Sherman, Sheridan, Farragut, all are watching for it. Their trumpets are ready to echo back our election bells.

In every aspect the contest is vast. It is vast in its relations to our own country, — vaster still in its relations to other countries. Overthrow Slavery here, and you overthrow it everywhere, — in Cuba, Brazil, and wherever a slave clanks his chain. The whole execrable pretension of "property in men," wherever it now shows its audacious front, will be driven back into kin-

dred night. Nor is this all. Overthrow Slavery here, and our Republic ascends to untold heights of power and grandeur. Thus far its natural influence has been diminished by Slavery. Let this shameful obscuration cease, and our example will be the day-star of the world. Liberty, everywhere, in all her struggles, will be animated anew, and the down-trodden in distant lands will hail the day of deliverance. But let Slavery prevail, and our Republic will drop from its transcendent career, while the cause of liberal institutions in all lands is darkened. There have been great battles in the past, on which Human Progress has been staked. There was Marathon, when the Persian hosts were driven back from Greece; there was Tours, when the Saracens were arrested midway in victorious career by Charles Martel; there was Lepanto, when the Turks were brought to a stand in their conquests; there was Waterloo. But our contest is grander. We are fighting for national life, assailed by belligerent Slavery; yet such is the solidarity of nations, and so are mankind knit together, that our battle now is for the liberty of the world. The voice of victory here will resound through the ages.

Never was grander cause or sublimer conflict. Never holier sacrifice. Who is not saddened at the thought of precious lives given to Liberty's defence? The soil of the Rebellion is soaked with patriot blood, its turf is bursting with patriot dead. Surely they have not died in vain. The flag they upheld will continue to advance. But this depends upon your votes. Therefore, for the sake of that flag, and for the sake of the brave men that bore it, now sleeping where no trumpet of battle can wake them, stand by the flag.

Tell me not of "failure." There can be but one failure, and that is the failure to make an end of Slavery; for on this righteous consummation all else depends. Let Liberty be with us, and no power can prevail against us. Let Slavery be acknowledged, and there is no power which will not mock and insult us. Such is the teaching of history, in one of its greatest examples. Napoleon, when compelled to exchange his empire for a narrow island prison, exclaimed in bitterness of spirit, "It is not the Coalition which has dethroned me, but liberal ideas." Not the European Coalition, marshalling its forces from the Don to the Orkneys, toppled the Man of Destiny from his lofty throne; but that Liberty which he had offended. He saw and confessed the terrible antagonist, when he cried out, "I cannot reëstablish myself; I have shocked the people; I have sinned against *liberal ideas*, and I perish." Memorable words of instruction and warning! Ideas rule the world, and, unlike batteries and battalions, they cannot be destroyed or cut in pieces. May we so press this contest as not to shock mankind or sin against Liberty! May we so close this contest as to win God's favor! Nature has placed the eye in the front, that man shall look *forward and upward;* and it is only by contortion that he is able to look behind. Therefore, in looking forward and upward, we follow Nature. An ancient adventurer, escaping from the realms of Death, looked behind, and he failed. We, too, shall fail, if we look behind. Forward, not backward, is the word, — firmly, courageously, faithfully. There must be no false sentiment or cowardice, no fear of "irritating" Rebels. When the Almighty Power hurled Satan and his impious peers

> "headlong flaming from the ethereal sky,
> With hideous ruin and combustion, down
> To bottomless perdition, there to dwell
> In adamantine chains and penal fire,"

no Chicago platform proposed "a cessation of hostilities, with a view to a convention or other peaceable means"; nor was there any attempt to save the traitors from Divine vengeance. Personal injuries we may forgive; but Government cannot always forgive. There are cases where pardon is out of place. Society that has been outraged must be protected. That beautiful land now degraded by Slavery must be redeemed, while a generous statesmanship fixes forever its immutable condition. If the chiefs of the Rebellion are compelled to abdicate in favor of emigrants from the North and from Europe, swelling population, creating new values, and opening new commerce, — if "poor whites" are reïnstated in rights, — if a whole race is lifted to manhood and womanhood, — if roads are extended, — if schools are planted, — there will be nothing inconsistent with that just clemency which I rejoice to consider a public duty. Liberty is the best cultivator, the truest teacher, and the most enterprising merchant. The whole country will confess the newborn power, and those commercial cities now sympathizing so perversely with belligerent Slavery will be among the earliest to enjoy the quickening change. Beyond all question, the overthrow of this portentous crime, besides immeasurable contributions to civilization everywhere, will accomplish two things of direct material advantage: first, it will raise the fee-simple of the whole South; and, secondly, it will enlarge the commerce of the whole North.

In this faith I turn in humble gratitude to God,

as I behold my country at last redeemed and fixed in history, the Columbus of Nations, once in chains, now hailed as benefactor and discoverer, who gave a New Liberty to mankind. Foreign powers watch the scene with awe; saints and patriots from their home in the skies look down with delight; and Washington, who set free his own slaves, exults that the Republic, which revered him as Father, now follows his example.

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